WSBA President Ellen Conedera Dial on The Search for Balance in a Lawyer’s Life p.13
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Stephen Hayne has been named one of Seattle’s Best Lawyers by Seattle Magazine, one of Washington’s Top Ten Trial Lawyers by the Washington Law Journal, and a Super Lawyer every year since inception by Washington Law & Politics. He is a past president of the Washington Association of Criminal Defense Lawyers, and has chaired the Criminal Law Sections of the WSBA, WSTLA and the KCBA. In 2003, the Washington Association of Criminal Defense Lawyers awarded him its highest honor; the William O. Douglas Award ‘For extraordinary courage and dedication to the practice of criminal law’.

Steve has taught trial practice at the UW and Seattle U Schools of Law, the National Institute of Trial Advocacy, and the Trial Masters Program, and has been a featured speaker at over 90 continuing legal education programs in the U.S. and Canada. He has published numerous articles in the Bar News, Trial News, Defense, Champion and Overruled magazines. He was lead counsel/co-counsel in State v. Straka, State v. Brayman, Seattle v. Allison, State v. Scott, State v. Ford, and Seattle v. Box. He has tried hundreds of cases from capital murder to reckless driving and currently limits his practice to DUI and serious traffic offenses.

Aaron J. Wolff graduated with honors from the Seattle University School of Law before becoming a DUI prosecutor for the cities of Kirkland and Tukwila. In 2003, Aaron joined the Law Firm of Stephen Hayne where he has limited his practice to defense of DUI’s and other serious traffic offenses. He is a graduate of the National College of DUI Defense, the DRE Drug Evaluation classification overview program and is a NHTSA qualified administrator of the Standardized Field Sobriety Tests. In 2004, Aaron completed the factory training program on the BAC Datamaster breath testing machine.
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Letters to the Editor

**Bar News welcomes letters from readers. We do not run letters that have been printed in, or are pending before, other legal publications whose readership overlaps ours. Letters should be no more than 250 words in length, and e-mailed to letterstotheeditor@wsba.org or mailed to WSBA, Attn: Letters to the Editor, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539. We reserve the right to edit letters. Bar News does not print anonymous letters, or more than one submission per month from the same contributor.**

**Hear, hear for public defense**

Thank you for your series of articles (February 2007 Bar News) highlighting the importance of public defense and the continuing challenge of providing adequate funding for this function. Bob Boruchowitz’s article (“Right to Counsel Remains Threatened in Washington”) correctly concludes that even in our state, and despite improvements identified by other writers, robust public defense is non-existent in many of our counties. Funding is critical. Fair compensation and manageable caseloads attract dedicated and competent lawyers. Good lawyers leave clients feeling they have been treated fairly and with respect, increasing the likelihood that they will not return to the criminal justice system. Beyond this social good, as Tom McBride’s article (“Maintaining a Healthy Criminal Justice System”) notes, prosecutors believe good lawyers bring practical, economic benefits to the criminal justice system.

Clients confident in the advice of appointed counsel will settle cases that should be settled, saving the time and expense of needless trials. While we do not suffer the mischief of the Alabama prosecutors mentioned in Rob McKenna’s article (“The State’s Role in Defining the Constitutional Right to Counsel in Gideon”), prosecutors who fought creation of a public defense system by claiming defendants are better off without lawyers, the idea of public funding for poor criminals remains politically unpopular. We can turn this tide by persuading legislators and the public that good public defense promotes societal values, public safety and cost efficiencies. The education provided by your articles is a start.

*Tom Hillier, Seattle*

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**Second the motion**

Excellent articles regarding the status of public defense in the State of Washington. I spent the better part of a decade representing juveniles in criminal court and at times it felt like I was pounding hot sand with my head. At the time, I was an inexperienced criminal defense attorney. The firm that hired me controlled the public defender contract in my modestly-sized county in Eastern Washington and they expected me to work half-time in public defense and half-time in civil litigation. As it turned out, my more than full-time job in indigent defense included representing parents in dependency proceedings, approximately half of the juvenile offenders, all of the gravely disabled persons in commitment hearings, and parents in child support contempt proceedings. Fortunately, I was earning $29,000 per year without benefits or insurance. Well, we’ve come a long way since then. Under the leadership of longtime public defender Keith Howard, and with the support of our county commissioners, our county has opened a public defense office. The office is well-funded and staffed.

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with committed public defenders that receive a living wage for their hard work. Hopefully, this is a sign of better things to come. Although I am no longer a public defender I still fully believe in the adage that public defense is the last cornerstone of the Constitution.

Tomas Caballero, Wenatchee

Rules, rules, rules

Ellen Conedera Dial writes in the January 2007 Bar News that new ethics rules which prescribe mandatory disclosure by lawyers of confidential information “to prevent reasonably certain death or substantial bodily harm” and which allow “discretionary” disclosure of confidences, to remedy past acts that have caused substantial harm to the financial interest of another because of the client’s commission of a fraud or crime. The lawyer may also disclose confidential information if the client’s crime or fraud might in the future cause or increase financial harm to another. The lawyer is either required to inform on a client or has the option to inform when it might be in the lawyer’s interest to be an informant in order to protect the lawyer from a bar proceeding and a lawsuit. The client has no privilege or right whatsoever, must hope the lawyer will not inform on him or her. If somehow the lawyer thinks someone might think the client might have committed a crime or fraud that might harm someone, then the lawyer is at risk, and so is the client. There are crimes everywhere, federal and state, in land use, employment, occupational health and safety, in communicating things, in aiding others, in supplying information to the government. The area of potential disclosure for the client is broad. Fraud also is a vague area. The rule may destroy the confidence of a client in a lawyer and the confidence of a lawyer in the client, and it will certainly make clients circumspect about confiding in their own lawyer.

To understand why these rules are so pernicious, it is helpful to understand what lawyers and courts do. Lawyers and courts take property and freedom from people. The only defense the target has is the defense lawyer. It is one lawyer against all the power of the courts, often all the power of the executive branch, and all the skill of a lawyer who wants the property of the defendant. A civil or criminal defendant is entitled to a lawyer because due process means that a court cannot adjudicate a claim if the defendant does not have a voice which is loyal and informed and can tell the client’s story. And if that client is afraid to confide in the lawyer, for fear of being informed on, and the lawyer is afraid to use confidences for the client’s benefit, for fear of being sued and disbarred, there is no lawyer. A “lawyer” who cannot hear is insufficient to meet due process standards.

The rule is unconstitutional and should be abandoned.

Roger B. Ley, Seattle

Don’t pen me in

I would like to sincerely apologize to the editors of the Bar News for any difficulties my November 2006 article ("Substantive Due Process and the Problem of Horse Sex") has caused. I have never been personally responsible for creating a new low in legal journalism before, and, while I suspect that my detractors may be granting me a little too much credit as a force for evil in the world, I would be genuinely upset to learn that I had lost subscriptions for the magazine. To my
detractors, I fully admit to all charges of questionable taste, underdeveloped metaphors, and imprecision of language. However, I also believe that some people have been taking my article far too seriously.

My goal in writing this piece was simply to puzzle out the difficulties in turning morals legislation into a constitutional question. In my reading about the issue, it seemed to me that most people confuse the question of whether morals legislation should be constitutionally limited with the question of whether the conduct being legislated is actually moral or immoral. I chose bestiality as a topic precisely because the conduct is so universally considered to be immoral. If limits on morals legislation can be defended there, they can be defended anywhere. If there cannot be a liberty interest in bestiality, then perhaps liberty interests themselves may be universally called into question. The point is that, if we are intellectually honest, the analysis shouldn’t change based on the level at which a particular conduct is deemed to be socially acceptable.

My article may have implied that Washington’s bestiality law is redundant and of questionable legislative value. I deny that I have attempted to encourage anyone to turn to a life of barnyard debauchery.

Natalie Daniels, Seattle

When a meth lab isn’t a meth lab

I read with interest the article entitled “Meth Labs: An Environmental Bad Dream For Property Owners, Tenants, and Neighbors” by Michael A. Nesteroff (January 2007 Bar News). While it does seem evident that the use and manufacture of methamphetamine in the state of Washington is on the rise, I’d like to present another side to this story, one that many defense attorneys have already discovered.

Mr. Nesteroff accurately states that under Washington law, acceptable standards of contamination are 0.1 micrograms per 100 square centimeters. Levels discovered over the 0.1 standard require remediation. The State Department of Health (DOH) enters the home, apartment, hotel room or other structure suspected of methamphetamine manufacture and takes random samples using an alcohol soaked 4” x 4” absorbent pad. The samples are sent to a chemist who determines methamphetamine levels within a 70% or more “QA” (Quality Assurance). The tests are specific. If the testing indicates the presence of meth, it cannot be confused with other chemicals, drugs, or contaminants. However, in every case where the levels exceed 0.1 per 100 square centimeters, the property is labeled “Clandestine Drug Lab” by the DOH and cleanup is ordered. Cleanup can involve removal and replacement of drywall, insulation, carpeting, fixtures and more. The property owner then faces the costs of cleanup that can run many thousands of dollars.

Further, the address of the property is listed on the Health Department’s website: http://www.doh.wa.gov/ehp/ts/CDL. For example, lists of “known drug labs” by county can be found at: http://www.tpchd.org/files/library/1d1895cc5d27ad28.pdf. Even maps of “known drug labs” are available online by county, and “unfit for use” signs are posted on the structure and recorded with the county, all thanks to the Washington State Department of Health. However, the numbers, addresses and maps are skewed.

As if the costs of cleanup were not enough of a headache for the property...
owner, the “Scarlet Letter” of the DOH lists and maps, and county “ unfit for use” filings reduces the property’s value, and hence property taxes for the county. This would all seem rational if it weren’t for the problem of defining the existence of a “Clandestine Drug Lab.”

Suppose, for example, that the DOH samples were swiped in properties where no other evidence of the existence of a drug lab is found. That doesn’t matter. If the DOH samples show any levels of methamphetamine over 0.1, the property is a “Clandestine Drug Lab!” Does low levels of methamphetamine over 0.1 always indicate a Clandestine Drug Lab? To be certain, I checked with a DOH certified forensic laboratory senior forensic chemist. The answer is: “It is impossible to tell whether the sample shows the existence of a drug lab, or whether it simply shows drug use in the property.”

So, without any other evidence, a State agency is granted the power to convict non-criminals (property owners) and list relatively innocent residences as “Clandestine Drug Labs” on the internet for all to see. Do you, property owner, always know what goes on in your teenager’s bedroom or in a guest bath? If not, don’t call the Washington State Department of Health.

How the Washington State Department of Health procedures have thus far escaped constitutional scrutiny is a mystery. A second look at the applicable laws and regulations in concert with the constitution (and common sense) appears in order for the law’s initial intent to succeed.

Debra Chambers Buchanan, Tacoma

Accept no substitutes

It is encouraging to see the near universal opposition to the “Legal Technician” proposal by the practice groups who have analyzed it as well as WSTLA and the Board of Governors.

The proposal would have allowed non-lawyers to practice much of the law that attorneys do now as little as two years of community college education while creating a parallel licensing system for the non-lawyer “legal technicians,” funded by $700,000 in WSBA bar dues.

The WSBA Family [Law] Section has explained to the BOG that the measure would fail to provide “competent and qualified legal assistance” and would fail to fulfill the legal need “in any meaningful way.”

Consequently, on November 30, 2006, the Board members of Washington State Trial Lawyers Board voted unanimously against the proposal (34-0) urging “the WSBA to take a strong stand against the legal technician program and pilot project.”

In their subsequent letter, WSTLA cited 7 reasons they opposed the technician proposal including “the difficulty of assuring the delivery of competent legal services,” and the likelihood that the technician would be no less expensive than a “young or less qualified attorney,” and that there would be no assurance that “legal technicians will actually provide services to the poor.”

According to a member of the WSBA Board of Governors, WSBA members were 95-1 against the proposal.

The Practice of Law Board should drop the technician proposal and instead take WSTLA’s advice by assisting low income residents to obtain competent legal services through “GAAP program and existing legal services.”

Erik Bjornson, Tacoma
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The Search for Balance

Ellen Conedera Dial, WSBA President

In the office of WSBA Executive Director Jan Michels, you will find a handsome brass balance scale, perhaps 18 inches tall. From each arm, a scale-pan is suspended by three brass chains. Each scale-pan is large enough to hold a legal brief. This scale, however, is empty, ready for the next time it is needed to demonstrate the laws of physics. Most visitors to Jan Michels’ office would recognize the balance scale instantly as a symbol, not of the science of the natural world, but of the promise of our legal system that all persons coming before the bench will be treated equally; that their cases will be given an impartial weighing of law and fact, of legal argument and policy; and that this system of justice is a worthy one. Indeed, our job as advocates is to assure that the proper balance is achieved in the legal matters that we handle.

There is another kind of balance, though, that is more elusive. Often when lawyers speak of “balance” today, the subject is not the ideal of justice that is embodied in our constitution and system of laws. Frequently, discussions of “balance” revolve around the very concrete need of individuals to find personal growth and satisfaction in their pursuits, and particularly in their lives as busy lawyers. In this context, I have heard the word used in many ways. I have heard it described as a reason that employers should offer flexibility in work schedules. I have heard it used to explain why some lawyers choose to work part-time, and why others choose to devote a significant part of their time to community service. These serious ideas about what balance means are part of a very important discussion about our profession, its challenges, and its future. I have heard discussions of the lack of balance as a major failing of our profession. To my great alarm, I have heard the word defined (wrongly) as a code word for not wanting to work hard.

Reports from bar associations across the country are that lawyers entering the profession voice a clear expectation of balance in their professional lives. Yet many lawyers express cynicism over whether balance can ever be achieved in our profession. I have begun to dip into the vast pool of literature about balance in the lives of lawyers. I am stunned by the almost universal recognition by professionals who work in this area that the high levels of stress that lawyers contend with every day are causing great harm to lawyers, to the profession (as a result of decreased productivity and dissatisfaction), and to clients (as a result of impairment of lawyers’ judgment and ability to deal effectively with complex and challenging problems). Rates of dissatisfaction among lawyers are alarmingly high, as are the rates of depression among lawyers (as I wrote in my December 2006 Bar News column). The issue of balance is not limited to any demographic profile, nor is it a purely personal issue. It is an issue of how we, as lawyers, are to be successful in the demanding role of protecting clients’ interests.

It is difficult to articulate what balance means in life and career, because the topic is, by its nature, complicated. The literature about balance in lawyers’ lives can be bewildering. It ranges from studies of the stress factors inherent in a lawyer’s job and common non-productive responses to that stress, to advice on a host of activities that can reduce negative stress and encourage development of a calm and focused approach to problems. One can find advice on everything from meditation to nutrition and play/laughter to exercise. A common theme is that time demands and other sources of stress can lead lawyers to become extremely dissatisfied with their jobs and their careers. There is also a very hopeful theme, however, that there are known approaches to changing
the ways that lawyers respond to the stress in their lives and achieving a more positive outlook.

One of the most useful discussions I have found is an article by Carl Horn entitled "Balanced Lives," and presented in the Winter 1997 volume of The North Carolina State Bar Journal. After Judge Horn reports the results of studies showing high levels of dissatisfaction and "burnout" among lawyers and the causes identified in those studies, his article suggests nine strategies for working towards a solution. The very first of those strategies is "Resolve to lead a balanced life," meaning that the decision to have balance in one's life is, in Judge Horn's view, a personal choice. Among the other eight strategies is a discussion of the role of employers and law schools — the only strategy Judge Horn mentions that is not directed at the individual choice of the lawyer. He reminds us that employers should have reasonable expectations of lawyers' performance and value the health and well-being of their employees. Law schools, he argues, need to do better at preparing law students for the challenges of a legal career. What Judge Horn makes clear, however, is that finding greater satisfaction and balance in a legal career is not a matter of altering external circumstances, but rather of changing the way we look at those circumstances and how we decide to respond to them. What that means in concrete terms is unique to each individual. Judge Horn's article lists nine different approaches, but there are many, many articles about how lawyers have made positive changes in their lives and improved their own levels of satisfaction with their jobs and their lives.3

I am reminded of a conversation about balance that I had with a group of experienced women lawyers, many of them raising young children. One described the frustrations of a demanding law practice that appeared to preclude recreational activities that she found enjoyable and relaxing. Another, who practiced law in the same firm and whose law practice was equally demanding and successful, described how she made it a point to set aside time for those activities and to integrate that part of her life into a busy practice. The two described similar external circumstances, but had different approaches to addressing them.

In an interview with the Puget Sound Business Journal,4 which named her 2006 Executive of the Year, Sally Jewell, CEO of Recreational Equipment, Inc., described a time in her extraordinary career when she struggled to balance the demands of work and family. At an event celebrating a recent promotion to executive vice president of Security Pacific Bank, she recalled having told a good friend, "I don't do anything well. I'm not a good wife. I'm not a good mother. I'm not a good banker." How many of us have felt that way in our own lives as busy professionals? Ms. Jewell responded by making changes in her daily schedule that allowed her greater flexibility to achieve her goals. Throughout her career, the article tells us, Ms. Jewell has pursued a personal goal of devoting one-third of her time to work, one-third to her family, and one-third to serving her community. There is nothing static or formulaic about this goal — it calls for flexibility and adaptability. We have a lot to learn from what Sally Jewell has called her "Rule of Thirds."

In my own life-long search for balance, I have come to the following conclusions. First, balance is a matter of personal choice about how one decides to look at the world and lead one's life. Second, having balance in one's life is consistent in every way with having a satisfying and successful legal career. Third, balance is not a state to be achieved, but rather a continuing series of responses to external circumstances. Fourth, balance is not an issue that belongs to any one group — it is an issue for all of us. Finally, although the skills that we value as lawyers can sometimes get in the way, the problem-solving skills that lawyers develop as a natural part of our jobs can be great assets in the search for balance.

Back to the balance scales in Jan Michels' office. I'm not sure I'll ever think of them in quite the same way again. They have become a symbol for me of constant movement and change. Perhaps that is not a bad description of our justice system, either.

Ellen Conedera Dial can be reached at 206-359-8025 or ecddial@gmail.com. If you would like to write a letter to the editor on this topic, please e-mail it to letterstotheeditor@wsba.org or mail it to WSBA Bar News, Attn: Letters to the Editor, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539.

NOTES
1. Carl Horn is chief U.S. magistrate judge for the Western District of North Carolina.
2. The nine strategies cited by Judge Horn are as follows: (1) "Resolve to lead a balanced life"; (2) "Implement healthy lifestyle practices"; (3) "Strengthen relationships with your spouse, family, and friends"; (4) "Live under your means"; (5) "Incorporate the Golden Rule into professional life"; (6) "Give back"; (7) "Understand that law firms, courts, and schools play a role"; (8) "Consider a sabbatical"; and (9) "Keep perspective."
3. Contact the WSBA Lawyers Services Department for a list of useful articles.
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From left: William Kirk, Vernon Smith, Douglas Cowan, Eric Gaston
2007
State of the Judiciary Address

Photo by Todd Timmcke
BY CHIEF JUSTICE GERRY L. ALEXANDER

The following is the text of Chief Justice Alexander's State of the Judiciary Address presented to the joint session of the Washington State Legislature on January 17, 2007.

P resident Owen, Speaker Chopp, Governor Gregoire, elected officials, members of the House and Senate, fellow justices and judges, ladies and gentlemen. Good afternoon.

Let me first extend thanks to the members of the legislature for the warm welcome you have accorded me and my fellow justices. We are very honored to be here for the purpose of allowing me to present, on behalf of our court and the judiciary of this state, the biennial State of the Judiciary address, the fourth I have had the privilege of delivering since I first became chief justice.

My colleagues and I are aware that time is precious to legislators during legislative sessions, and we are grateful for the opportunity to speak to you as well as to our state's elected officials and the people of Washington.

While the halls of this legislature are in close proximity to the offices of our state elected officials and the Temple of Justice, our respective branches of government have very different functions and we do not have many opportunities like this to gather together. While some may feel that this is as it should be under the doctrine of separation of powers, it is my view that occasions like this, and the governor's State of the State message, can lead us all to better appreciate the important role that each branch performs in our democracy.

As you know, our state's justice system is present in every county in our state, as well as in most of our cities and towns. It functions in courthouses and municipal court buildings, and is presided over by nine justices of the Supreme Court, 23 judges of our Court of Appeals, 182 superior court judges and 204 full- and part-time judges of our district and municipal courts. These justices and judges can't, of course, manage the system alone and, fortunately, they have the assistance of dedicated court commissioners, county clerks, and staff that work hard managing caseloads that collectively total more than two million filings each year — more than one filing for every three citizens of our state.

I wish I could have every judicial officer in the state here today, but as you will be able to tell from my remarks, they have plenty to do at home. I did, though, ask a few judges to be here to represent the judiciary of our state. Representing our hard-working Court of Appeals is its presiding chief judge, Steve Brown of Yakima. Judge Brown, would you please stand. Also present are the presidents of our two excellent trial court associations, Kittitas County Superior Court Judge Michael Cooper, president of the Superior Court Judges' Association of Washington, and Grant County District Court Judge Richard Fitterer, president of the District and Municipal Court Judges' Association. I would like them to stand as well and be recognized. Sitting with these judges are members of the Board for Judicial Administration, the policy-setting board for the entire judiciary, which had its monthly meeting here in Olympia earlier today. Would they please stand.

I am immensely proud of these judges and the judicial officers that they represent at the four levels of our court system. I have been fortunate to serve at three of those levels during my judicial career — the superior court, the Court of Appeals, and for the last 12 years at the Supreme Court — and I can tell you from my almost 34 years of experience in our justice system, that we have one of the hardest-working and innovative collection of judges in the nation. In my view, the quality of Washington's judiciary has never been better than it is at this moment.

At every level, our courts have a direct effect on the lives of individuals. This is particularly true of our trial courts. At the superior court, judges determine child-custody issues, protect victims of domestic violence from harm, preside over felony criminal cases, and all manner of significant civil disputes. At the limited jurisdiction level, judges handle misdemeanor and gross misdemeanor cases, traffic infractions, and a myriad of other matters, including, at the district court, small-claims cases and civil actions where $50,000 or less is sought. Our limited jurisdiction trial court judges see huge numbers of persons in their courts each year and these courts can truly be called our "people's courts."

When reflecting upon the important work of each level of court in our state, and the challenges they face, I am reminded of . . . our trial courts have been severely challenged as they have endeavored to keep up with increasing caseloads. In some jurisdictions, particularly in our metropolitan areas, we have seen delays in getting cases to trial due to crowded court calendars, difficulties in obtaining qualified interpreters for non-English speakers, criminal defense attorneys with caseloads that are too large, and large numbers of persons going without representation in civil cases, particularly in family court matters.

Unfortunately, we have not done the best job as a state government in maintaining our justice system at the trial level. Allow me to elaborate. Since we first became a state in 1889, our trial courts have been funded almost entirely by local governments — our counties and cities. This means of funding our trial courts was not problematic in earlier times because our court system was relatively small and local
governments did not have huge demands placed on their resources. But as the years have gone by, the number of cases flowing into our courts rose dramatically as our population increased and a variety of new laws and regulations were enacted at the state and local level. At the same time, local governments have assumed financial obligations that were unknown to their predecessors. As a consequence of all of this, our trial courts have been severely challenged as they have endeavored to keep up with increasing caseloads. In some jurisdictions, particularly in our metropolitan areas, we have seen delays in getting cases to trial due to crowded court calendars, difficulties in obtaining qualified interpreters for non-English speakers, criminal defense attorneys with caseloads that are too large, and large numbers of persons going without representation in civil cases, particularly in family court matters.

Faced with all of this, the state’s Board for Judicial Administration addressed, what it concluded was the crisis facing our trial courts, in the “Justice in Jeopardy Initiative,” first presented to you in 2005.

This initiative flowed out of the hard work of the Court Funding Task Force and its workgroups, a body that was formed in 2002. It was comprised of more than 100 persons from across the state and from all backgrounds, including members of the legislature: Representatives Ruth Kagi and Pat Lantz and Senators Adam Kline, Mike Hewitt, and Jim Kastama.

You may recall that when we first spoke to you about the Justice in Jeopardy Initiative, we relayed a startling statistic from the Task Force’s report — that Washington state ranked last among the states of the union, in terms of state government participation in the funding of trial courts, indigent defense, and prosecution.

Today, despite the advent of additional state funding in the last two years, budget-strapped local governments still bear more than 80 percent of the costs of maintaining our trial courts. Although state government funds the rest, less than one percent of the state budget goes to maintain our justice system and the courts, which compose the key component of that system, courts that are provided for in our state constitution — a constitution that says that justice is to be administered “without unnecessary delay.”

The report of the Court Funding Task Force and the other studies that have been done over the years have recommended that eventually, the state should pay 50 percent of the cost of trial court operations and indigent criminal defense, and assume a substantially greater role in funding civil legal aid services for Washington’s low-income residents. We think that this partnership approach between state and local government makes more sense than a complete state takeover of the cost of our trial courts, the path that California and Oregon have followed. We say this because we believe that local jurisdictions should have a stake in how the courts operate in their jurisdictions.

We recognized, however, that obtaining an increase in state funding of the magnitude we envision is a major change, and thus, we have opted for recommending to you an incremental approach. The more we reflect on the Task Force recommendations, the more we are convinced that we have developed the best approach in the nation, a shared responsibility between state and local government.

The judiciary has been immensely gratified by the support that the legislature has given since we first approached you with the Justice in Jeopardy Initiative. In the
Deborah M. Nelson, president of the Washington State Trial Lawyers Association, has joined the Seattle law practice of Michael E. Nelson and Frederick P. Langer. Their new firm, Nelson Langer Nelson, PLLC, stands up for injured people and holds insurance companies accountable for failing to fulfill their promises. Mike, Fred and Deborah – you may know her as Deborah Nelson Willis – offer a combined 55 years advocating for victims in brain injury, long-term disability insurance denial, catastrophic personal injury, and insurance bad faith cases.

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sessions of 2005 and 2006, you recognized that state government had a responsibility to pay a higher proportion of the costs of the state’s justice system. In those sessions, you appropriated significant funds, much of which was derived from higher user fees, and applied it to the support of our trial courts, public defense, and civil legal aid.

More specifically, in 2005, in Senate Bill 545, the Office of Civil Legal Aid bill, and House Bill 1542, you provided for state funding of a portion of district and municipal court judges’ salaries, and for trial court improvement accounts, as well as for legal representation for indigent parents in termination and dependency cases; civil legal aid programs; and indigent criminal defense.

In 2006, you appropriated additional funds for a pilot jury project, expansion of the parents’ representation program, and provided additional funds for civil legal aid programs.

While much more remains to be done, I am pleased to highlight the positive changes that have been made as a consequence of what this legislature has done in the two previous sessions.

Civil Equal Justice

Let me first talk about civil equal justice. In 2005, the new Office of Civil Legal Aid, OCLA for short, got underway and began to administer state-funded legal aid services to the poor, monitor the use of state funds, and report on the status of access to the civil justice system for low-income people.

OCLA, headed by Jim Bamberger, a long-time legal aid attorney, and watched over by the Civil Legal Aid Oversight Committee, has worked with the Supreme Court’s Access to Justice Board to establish delivery objectives and accountability systems to close the gap documented in the landmark 2003 Civil Legal Needs Study.

The civil legal needs of Washington’s low-income people run the gamut from employment and housing issues to problems such as those faced by Dawn Seljestad, a low-income mother of two children from Shelton, who endured years of controlling and abusive behavior by her husband. With the assistance of a lawyer from the Northwest Justice Project, Dawn was able to get a protective order, a decree of dissolution, and an order requiring her abuser to enter into treatment to deal with his conduct.

I am pleased to say that Dawn Seljestad is with us — would you please join me in recognizing this courageous woman.

Despite recent gains, biennial funding for civil legal aid still falls $33 million short of the level necessary to fully address the needs chronicled in the landmark 2003 Civil Legal Needs Study. One gaping hole is the lack of any meaningful legal aid services in the rural areas of our state. We encourage the legislature to provide additional funding so that legal services offices can be re-established to serve low-income citizens in Colville, Pullman, Port Angeles, Aberdeen, Omak, Moses Lake, Longview, and Pasco.

Trial Court Operations

Regarding trial court operations, important steps forward were taken in 2005 and 2006 when this legislature recognized the state’s duty to partner with local jurisdictions in funding our trial courts.

As a result of your actions, local governments across the state have obtained funds that have enabled them to pay a portion of the salaries of district court judges and elected municipal court judges. Thanks to you, Trial Court Improvement Accounts have also been established, which have enabled jurisdictions to improve and enhance a range of trial court operations.

Although the money was just beginning to flow into these accounts by mid-2006, let me give you a few examples of what is going on in jurisdictions across the state as a consequence of the creation of Trial Court Improvement Accounts:

- Benton County is upgrading the recording system in its district court courtrooms.
- Clallam County is adding a court security office position.
- The City of Everett is installing new video equipment that will connect its municipal court with the Snohomish County Jail so that arraignments can be conducted while the defendant remains in jail, thereby making it unnecessary to transport the defendant to the municipal court.
- Lewis County is partially funding an assistant court administrator for its district court.
- Yakima County is using the funds to operate a district court satellite facility in Grandview to better serve the southeast part of that county.

Your creation of trial court improvement accounts recognized that each jurisdiction has different needs. These accounts allow trial courts to tailor improvements to best serve the citizens of their judicial district. We anticipate that these accounts will have a very beneficial effect in coming years, and we will continue to update you on how the funds are being utilized.

Next year, we will also provide you with the results of the study you authorized on the effect of increasing the daily attendance fee for jurors in three jurisdictions: Des Moines Municipal Court, Franklin County Superior Court, and Clark County Superior Court. We believe that is the first time a project like this has been undertaken anywhere in the United States and we look forward to sharing the results of the study with you.

Court Interpreters

Let me now direct my comments to what we are proposing to you this year as a part of our continuing Justice in Jeopardy Initiative. In the area of trial court improvements, we are asking for an additional $8 million in the biennium to carry out the promise of a statute that was enacted by this legislature in 1989. I refer to RCW 2.43.010, which says that it is the policy of this state to secure the constitutional rights of persons who are unable to readily understand or communicate in English and cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

When I was a superior court judge years ago, we rarely needed interpreters in court. But our society has changed and has become more diverse. Indeed, you passed the statute that I just referred to after you took note of an audit that showed that thousands of non-English speakers were routinely unable to understand what was being said in court. Unfortunately, although we have probably the best system in the nation for certifying court interpreters, many jurisdictions are not able to follow the letter or the spirit of the law because of a lack of funds. The result is that, far too often, uncertified court interpreters are being utilized because of low pay and/or an inability to obtain a certified interpreter. This, of course, can result in testimony and evidence not being accurately presented to the trier of fact, thereby increasing the possibility that a wrong decision may result.

Although this is not a cost that the State has heretofore underwritten, we fear that
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the problems I have just described will not be eliminated unless there is an investment of dollars from state government to assist our hard-pressed local jurisdictions to meet their statutory obligations.

Public Defense
Let me next talk about public defense in criminal cases. A vital element of our Justice in Jeopardy Initiative relates to the necessity of meeting the constitutional mandate that, in all criminal prosecutions, the accused shall have the assistance of effective counsel for his or her defense. We can be proud that Washington recognized this right long before the U.S. Supreme Court ruled in 1963 in the famous case of *Gideon v. Wainwright* that states must provide such legal assistance. Indeed, Washington’s then-attorney general, John J. O’Connell, rejected a request from Florida’s attorney general to present a friend of the court brief in support of Florida’s position that Gideon, although indigent, was not entitled to a publicly funded defense. Instead, our attorney general presented an *amicus curiae* brief on behalf of Gideon.

Despite this history, it is fair to say that we have not fully heeded Gideon’s trumpet. I say that because too often in our state, indigent defendants are represented in criminal cases by lawyers who lack the training and experience to be considered effective or who are overburdened with caseloads that are so large that they are unable to devote adequate time to the defense. This is not, of course, true in every case. We have many dedicated public defenders in this state who do a fine job, often for inadequate compensation. But the systems we have in the state for providing public defense vary greatly and, consequently, we have a “crazy quilt” of public-defender systems with no two systems being exactly the same.

They all have some problems, though, and I believe this has been borne out by the investigative series that ran in the *Seattle Times* in 2004, the recent litigation in Grant County, and the report of the Blue Ribbon Task Force on Public Defense of the Washington State Bar Association.

While state law dictates that counties adopt standards for administering public defense systems, using Washington State Bar Association standards as guidelines, I am told by our state’s director of the Office of Public Defense, Joanne Moore, that presently no county public defense system is compliant.

Fortunately, positive steps are being taken to reverse this trend. As I have already observed, in 2005 this legislature adopted HB 1542, which provides that state funding will be progressively distributed to counties for the purpose of improving public defense.

We believe that, with additional state funding, our state’s defender systems can become compliant with WSBA standards. Last year, $3 million was distributed to counties pursuant to HB 1542 and I can report to you that 38 of the state’s 39 counties are now participating in the application process, administered by the Office of Public Defense. We need, though, to make a substantial leap forward in 2007–2009 toward closing what the *Spokesman Review* called an “embarrassing funding gap” so that our systems of public defense can deliver on our constitutional duty to provide adequate representation to all indigent criminal defendants.

The Office of Public Defense has also made incredible strides since I last addressed you in expanding to 18 counties the program that provides representation of indigent parents in dependency and termination actions. Studies show that with better representation, parents are better able to access court services and work through their problems, thus increasing their ability to be reunited with their children. We are asking that you expand the Parents’ Representation Program to every county.

**CASA**
Let me say a word about CASA — Court Appointed Special Advocates. This is a terrific program that trains volunteers to be advocates in dependency cases for abused and neglected children. As a part of our Justice in Jeopardy Initiative, we are requesting additional funding for CASA to accomplish essentially two things: first, to provide stability for CASA programs in rural areas and, second, to allow CASA to serve a minimum of 10,000 children statewide each year, up from the approximately 7,000 who are benefiting now. CASA is a huge bargain to the state because the public money only goes to provide supervision and training. The service to the children is provided by unpaid volunteers, like Patricia Scott of Jefferson County, who has contributed over 2,200 hours of service as a CASA volunteer. Ms. Scott, who was recently named CASA Volunteer of the Year, is here with a group of CASA volunteers, and I would like them to stand and be recognized for their service.

**Technology in the Courts**
Allow me to take a brief moment to discuss positive developments in technology in the judicial branch. We have decided to pursue purchase of a case-management system for statewide implementation to replace our 20-plus-year-old systems. This approach will greatly mitigate risks and accelerate the time to full implementation.

We will be seeking your authorization
We are pleased to welcome Aaron Besen to the firm.

Bullivant has expanded its capabilities in the healthcare industry. Aaron Besen has joined our Vancouver office where his practice will primarily serve long term healthcare providers. Aaron’s background brings our clients additional healthcare experience which involves transactional, finance, regulatory, employment, and real estate work for long term care facilities and related businesses. Over the last eight years, Mr. Besen has served as Vice President and General Counsel to Evergreen Healthcare Management, L.L.C., which, with its affiliates, managed or operated over 60 facilities in eight western states, including Washington, Oregon, California, and Nevada.

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to expend funds from the dedicated JIS account toward this end and are developing a court rule change to increase revenues generated from traffic infraction penalties to pay for this project.

Although I am not a technical whiz, it is my vision that by the time my service on the Supreme Court comes to an end, the foundation will have been laid so that the judiciary as a whole has not taken a position in response to any of these specific proposals, but I can assure you that we are intensely interested in the subject and we may take a position on all or some of these proposals, provided we can do so without compromising our ethical obligations. I do feel comfortable, though, in restating the long-standing position of the judiciary favoring a publicly financed voters’ pamphlet in the primary election. As you know, many judicial elections are decided in the primary, so we support the proposals for creation of a statewide primary voters’ pamphlet that would be mailed to every household.

The judiciary is also of the view that as long as we continue to elect judges in the manner set forth in our state constitution, we should elect all judges, including municipal court judges. We believe that this is necessary to assure independence of the judicial branch.

Let me close by saying that we know that this legislature will be presented with a myriad of requests to increase funding for a variety of governmental functions — for common schools and universities, for public employee salaries, for projects to improve the physical environment, and for corrections, and so on. All of these proponents, I am sure, will have a legitimate case to make. I don’t mean to tell you how to sort out all of these competing requests, other than to say that the provision of justice, on both the criminal and civil side, is a core function of government that should be adequately supported by all taxpayers, not just users of the system. The first building that was placed on this campus, courtesy of a long-ago appropriation from the legislature, was called the Temple of Justice, and the first building that every county built after this state came into being was a county courthouse. This reflects the fact that provision of justice has always been a priority for Washingtonians. In order for our state’s judiciary to continue to provide the quality of justice that our citizens expect us to provide, we must make the recommendations I have outlined. We hope that you will give these reasonable requests favorable consideration. Thank you for listening to me so courteously and for inviting me to present this address.

Gerry L. Alexander is chief justice of the Washington State Supreme Court.

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The Time Is Now: Guardians Should Be Licensed and Regulated Under the Executive Branch, Not the Courts

BY MARGARET K. DORE

With increasing numbers of Americans living longer, many are finding themselves under guardianship. The guardian appointed may be a family member or friend, or a “professional” guardian or guardianship company.

In many cases, the guardian is honest and hardworking for his ward. In other cases, the guardian abuses or exploits the ward. The exact magnitude of this problem is not known, but the names of articles in the popular press tell the story. See Jack Leonard, Robin Fields and Evelyn Larrubia, Guardians for Profit: Justice Sleeps While Seniors Suffer; and Barry Yeoman, Stolen Lives: Thousands of Older Americans Are Being Robbed of Their Freedom, Dignity, and Life Savings by a Legal System Created for Their Protection. How Can This Happen?

The Courts Respond

The issue of guardianship abuse has also caught the attention of the courts. The Washington State Supreme Court now oversees the “Certified Professional Guardian Program.” Under this program, there are two entities that directly supervise professional guardians: the Certified Professional Guardian Board, which reports to the Supreme Court, and the superior court in each county.

The premise of this article is that this well-meaning effort to increase guardianship accountability is misplaced. Although courts have traditionally been responsible for guardianship oversight, they are ill-suited for this function. Guardians should be licensed and regulated under the executive branch, not supervised by the courts.

The Board’s Role

The Certified Professional Guardian Board “adopts and implements regulations governing certification, minimum standards of practice, training, and discipline of professional guardians.”

The Board does not, however, interfere with the traditional role of the superior court. The superior court continues to be the “main venue” for making a complaint against a guardian.

For this reason, the Board will not ordinarily accept a complaint about a guardian unless it has first been reviewed by the superior court. The Washington Courts website states: [C]omplaints to the Certified Professional Guardian Board (Board) that have not been reviewed by the court will ordinarily not be accepted for review . . . .

If the superior court finds that the guardian “has failed in some way,” the finding can be forwarded to the Board with a grievance for further proceedings. Otherwise, the complaint will ordinarily be dismissed. The Board’s 2005 annual report provides the following example:

The Traditional Role of the Superior Court

With the traditional role of the superior court, the court supervises guardianship administration by supervising the guardian, its “agent.” Cf. In Re Gaddis’ Guardianship, 12 Wn.2d 114, 123, 120 P.2d 849 (1942) (“The guardian is in effect an agent of the court, and through him the court seeks to protect the ward’s interest.”)

How this works in practice is that the guardian petitions the court for approval of its management of the ward’s affairs. In King County, this is done on the motions calendar in the ex parte department. The court might be asked whether a bill should be paid or the guardian’s care plan approved. The superior court also approves the guardians’ accountings and investment strategies.

A Contrast to Other Activities

The “job” of a guardian is to manage the affairs of an incapacitated person. Other entities with similar jobs are not “supervised” by courts. An example would be a nursing home. Nursing homes manage the affairs of persons not able to care for themselves. Nursing homes are regulated by the Department of Social and Health Services.
The Department of Social and Health Services is under the executive branch.

Guardians also function as financial institutions. The larger guardianship companies provide trust and financial management services similar to a bank or trust company. For example, Guardianship Services of Seattle (GSS) describes its trust and financial management services as follows:

* The following describes the more common trusts managed by Guardianship Services of Seattle . . . .
* Financial Management Assistance involves helping an individual . . . manage investment portfolios . . .

(Emphasis added).

Like a bank or trust company, the larger companies also handle large sums of money. GSS manages in excess of $44 million. Banks and trust companies are not “supervised” by courts, but regulated by the Department of Financial Institutions. The Department of Financial Institutions is also under the executive branch.

Problems with Court Supervision
Little or no relevant training. A major problem with court supervision of guardians is that the typical judge or commissioner has little relevant training. Accounting, finance, and personal care are not required courses in law school. A judge or commissioner is also unlikely to have time to perform the necessary inquiry. A recent Seattle Times article quotes a local commissioner, as follows:

[The Commissioner], who handles guardian cases in King County, complained that he is expected to master complex accounting, investment strategies and what constitutes proper medical care—all while keeping cases moving. “I read them and I look for the outrageous,” he said.

By contrast, agency personnel under the executive branch typically have specialized training. For example, examiners with the Department of Financial Institutions are required to have a degree with course work in accounting or finance (or other commensurate education or experience). Oversight is conducted according to an agency protocol. This is opposed to a busy motion calendar in which a judge or commissioner does the best he can.

Court approval prevents further inquiry. A related problem is that once a guardian’s accounting is approved by the superior court, other entities will not usually investigate, although as noted above, there has typically been little investigation by the court. The Board will not ordinarily investigate due to its deference to the superior court. Other entities, e.g., a local fraud unit, will likely not investigate due to the order approving the accounting, which makes it look as if there has already been a full investigation. As set forth above, there has likely been little or no investigation.

The prohibition against ex parte contact interferes with a court’s ability to provide effective supervision. In general, successful supervision of an activity requires a close relationship between the supervisor and the person supervised. A good supervisor should also be open to receiving information and complaints from multiple sources.

This does not occur in the context of court supervision of guardians due to the prohibition against ex parte contact. The prohibition prevents courts and guardians from developing the necessary close relationships. It also prevents courts from learning about a guardian’s wrongdoing. Persons with information are generally prohibited from contacting the court.

The prohibition against ex parte contact is another factor which acts to prevent courts from providing effective guardianship supervision.

Complaining parties take on the risk of litigation. Another problem with court supervision is that wards or other complaining parties are generally required to make their complaints in the context of a court hearing. Meaningful participation requires the hiring of counsel. The Washington Courts website states:

By far the best way to advocate for a person who is the subject of a guardianship is to hire an attorney . . .

If the guardian contests the complaint, the ward or other party may find themselves in litigation against the guardian. If the complaint is unsuccessful, the ward or other party may be required to pay the guardian’s fees. With the inherent cost of litigation, courts are often reluctant to perform an in-depth inquiry.

These factors create “chilling effects” so that complaints are not made and, if made, are not fully pursued. These factors do not exist in the usual regulatory scheme. Instead, complainants generally have immunity from liability; the agency’s investigation is usually conducted outside of a litigation context.

How Licensing and Regulation Might Work
In other states, there are emerging programs in which oversight is provided via the executive branch. For example, California recently enacted SB 1550, which establishes the Professional Fiduciaries Bureau within the Department of Consumer Affairs. Idaho has a pilot program in which conservator reports will be reviewed by its Department of Finance.

The advantage to using existing agencies is that they are already set up. On the other hand, some current agencies, such as DSHS, would seem to have a conflict of interest. For this reason, a stand-alone agency could be desirable. Funding could be obtained from licensing fees or from the wards’ estates so that the agency would be revenue-neutral. Agencies such as the Department of Financial Institutions are revenue-neutral.

Conclusion
Without effective oversight, abuse of wards by their guardians will only continue. It is time to consider a different paradigm. Guardians should be licensed and regulated under the executive branch, not the courts. Other methods of third-party oversight should be investigated and explored.

Margaret K. Dore is an attorney in Seattle. Her published decisions include In Re Guardianship of Stamm, 121 Wn. App. 830, 91 P3d 126 (2004). She is chair of the Elder Law Committee of the ABA Family Law Section. She is a former chair of the King County Bar Elder Law Section. Parts of this article are similar to “The Retirement Nightmare: Guardianship in America,” a course presentation for the ABA Family Law Section, 2005 Fall CLE Conference, and “The Case Against Court Certification of Guardians: The Case for Licensing and Regulation,” NAELA News, Vol. 18, No. 1, February/March 2006. Ms. Dore can be contacted through her website, www.margaretdore.com. The opinions expressed...
in this article are the author’s and are not official or unofficial positions of the WSBA.

NOTES


7. Id.


9. See e.g., In re Guardianship of Karen Weed, Snohomish County Cause No. 05-4-01-193-3, “Order Approving Inventory, Budget, and Disbursements,” April 27, 2006; and In re Guardianship of Marie Charles, King County Cause No. 01-4-02852-6SEA, “Order: Approving Guardian’s Report (Care Plan and Inventory)” . . . , August 18, 2006.

10. Charles, supra; and Weed, supra (approving the guardian’s annuity purchase).

11. See e.g., RCW 18.51.040 Application for License; and DSHS website: www.aasa.dshs.wa.gov/pu binfo/housing/other/7NH.


14. See GSS’s website (“The aggregate market value of funds held in blocked accounts is $44,564,328.90”), (www.trustguard.org/Services/frequently_asked_
The Board’s Work

BY LINDSAY THOMPSON

Spokane, October 27, 2006
La Conner, December 8-9, 2006
Tumwater, January 11, 2007

In the October and December meetings, the Board made a bunch of appointments to committees and boards. They approved changes in various sections’ bylaws, mostly technical and updating sorts of alterations.

In October, the Practice of Law Board told the BOG they are thinking of trial programs, letting qualified nonlawyers engage in limited practice in the fields of family, housing/landlord-tenant, immigration, and elder law. It’s still very much a work in progress, with lots of things to sort out.

The Board approved a three-year investment totaling $75,000 in a Pipeline Program, for which WSBA will entertain proposals for funding programs targeting at-risk youth and steering them toward legal careers.

Joe Nappi, a trustee of the Washington State Bar Foundation, reported on the body’s work in 2006. It has given five Loan Repayment Assistance grants to lawyers in public service, and is looking at a credit-card affiliation scheme as another means of raising money. They are also a quarter of the way to a $100,000 Presidents and Governors Diversity Scholarship Fund in 2007.

President-elect Stan Bastian brought up an idea from the Board’s retreat last summer — creating an executive committee of the BOG to act between meetings. A good bit of discussion followed, especially about what senior staff should be on it. Governor Anthony Butler expressed concerns about so much power potentially flowing from the elected Board to a largely unelected executive committee, and after a while, a consensus emerged that everyone needed to think about the idea some more. So it was tabled for a while.

The Board also had an interesting discussion with the Mandatory CLE Board and Washington’s two U.S. attorneys, John McKay and James McDevitt, over getting WSBA CLE credit for government lawyers who take courses through a government entity that produces the CLEs. The rub is that CLE requires the materials be open to review by “any inquirer,” and some of the government CLEs contain highly classified information in the written materials. There was agreement that something needs to be done, and the MCLE folks will come back with ideas later this year.

In December, the Board got final reports on WSBA’s move to new office space, then about to occur. The move went pretty well, considering the complexity of the adventure, and the space is well laid-out. It gives staff much-needed room. The old space had gotten so crowded it looked a Roman galley in places.

The Environmental and Land Use Law Section gave the Board a report on its work, part of President Dial’s emphasis on the work of WSBA sections. By every account, they are a happy and active section, doing lots of useful things.
The ideas, commitment, and energy necessary to grow and run your law firm are enormous, as is the inherent risk. Insurance is one of the strategies you should use to manage that risk.

Daniels-Head is committed to crafting customized insurance solutions for law firms. Call us today, we can help you determine which coverage best suits your needs.
The CLE Committee chair, Jennifer Willner, and CLE director, Mark Sideman, gave a report on that department’s work: lots of CLEs, well attended by members, and making some money, too.

WSBA Immediate Past-President Brooke Taylor, who is chairing the search for WSBA’s next executive director, told the BOG that 57 applications had come in. His committee will winnow them down to some finalists. Current ED Jan Michels retires in May.

From time to time, the Board is asked to take positions on amicus briefs before Washington courts. This time it was for one in a case called In re Marriage of King, where some issues of the right of court-appointed counsel in non-criminal cases are raised. The Board thought it a worthy matter, and voted to approve a brief.

Klaus Snyder chairs the WSBA Legislative Committee, which is very busy this time of year. He led a presentation by many section members on bills they’d like the WSBA to support or endorse. There will be more to come. Most are technical in nature, designed to make existing law work better. We’ll have a summary of them all after the legislative session ends.

So much for the Cockney gecko and the caveman: the BOG decided not to renew its sponsorship of an auto insurance program through GEICO. It didn’t do very well with members.

The Board wrapped up the year with some discussion of potential legislation from Governor Gregoire leading toward some public funding of judicial elections. The BOG went so far as to make a general statement that they favor efforts that will promote a fair and impartial judiciary, but will otherwise take a wait-and-see about the details of what’s proposed.

In January, the Board of Governors traditionally meets in the Olympia area, and this year was no exception. The Board held its annual meeting with the Supreme Court, discussing items of mutual interest such as pending court rules, Limited Practice Board rules, Justice in Jeopardy provisions, judicial election reform, and the work of the WSBA Committee on Public Defense. The Board hosted a reception for the House and Senate Judiciary Committee members and other lawyer legislators, and lunched with members of the Thurston County Bar Association and the Government Lawyers Bar Association. At the luncheon, the Local Hero Award was presented to Thurston County District Court Judge Clifford L. “Kip” Stilz Jr., and to Bernie Friedman (posthumously).

At the January Board meeting, a number of individuals spoke about the recently adopted RPC 1.15A(e), which requires the annual reporting of “property” held by a lawyer. After discussion, the Board recommended an amendment which would change the word “property” to the word “funds,” clarifying that the annual reporting to clients applies only to funds held for the client. The proposed amendment now goes to the Supreme Court for their consideration.

The Board voted to cosponsor a resolution to be submitted to the ABA House of Delegates to adopt a model rule on provision of legal services following determination of a major disaster. The ABA model rule has provisions to allow lawyers from areas declared a disaster to temporarily practice in other states, and allows lawyers from other states to offer legal services to disaster victims.

Director of Legislative Affairs Gail Stone presented an update on bills supported and sponsored by the WSBA. (Updated reports are posted on the WSBA website at www.wsba.org/info/operations/legislative.)
Diversity and the Law

South Asians in 2007 — Take Another Look

BY MONICA KAUP CARY AND VENKAT BALASUBRAMANI

The South-Asian Experience — the Early 1900s:

Is a high-caste Hindu, of full Indian blood, born at Amritsar, Punjab, India, a white person within the meaning of section 2169, Revised Statutes?

Does the Act of February 5, 1917 (39 Stat. 875, 3), disqualify from naturalization as citizens those Hindus now barred by that act, who had lawfully entered the United States prior to the passage of said act?

It may come as somewhat of a shock, but these were the two "questions presented" in the case of U.S. v. Bhagat Singh Thind, decided by the U.S. Supreme Court in 1923.1 Ruling against Bhagat Singh Thind, the Court cited a 1917 statute that "excluded from admission into this country all natives of Asia within designated limits of latitude and longitude, including the whole of India." The decision reflected a climate of anti-Asian/South Asian hysteria that gripped the country. Indeed, Bhagat Singh followed an anti-Hindu riot in Bellingham, Washington, where on September 4, 1907, "a mob of about 500 men assaulted boarding houses and mills, forcefully expelling Hindus from Bellingham." Just a few years earlier, labor leaders in California formed the "Asiatic Exclusion League," which aimed to spread anti-Asian propaganda and influence legislation restricting Asian immigration.

1960s to Today

Although Congress passed legislation repealing anti-South Asian immigration provisions in the 1940s, the next wave of South Asians did not arrive in the United States until the 1960s, after the repeal of sharply restrictionist immigration policies that excluded most non-European immigrants. This wave comprised doctors, nurses, scientists, and engineers selectively permitted to enter the United States because of their educational status. It was not until the 1980s that United States borders reopened to working-class South Asians. The South Asian population in the United States grew 231.6 percent between 1980 and 2000. In 2000, the Census Bureau reported approximately 1.9 million South-Asian Americans.

South Asians fill many leadership roles in the American community today, whether in the business community or at large. Examples include Vinod Khosla, founder of Sun Microsystems and prominent venture capitalist; Bobby Jindal, a member of the U.S. House of Representatives; and Indra Nooyi, CEO of PepsiCo. South Asians are also making significant gains in the legal field. In 2006, Georgetown Law Professor Neal Katyal successfully argued Hamdan v. Rumsfeld,2 and was named one of the leading "40 lawyers under 40" by the National Law Journal. Notwithstanding these gains, South Asians continue to face instances of state-sanctioned discrimination. Examples include post 9-11 racial profiling, and operation "Meth Merchant" (the practice of disproportionately targeting South Asian-owned convenience stores for selling methamphetamine-related products).3

South Asians as Colleagues and Clients

The South-Asian-American community in the United States is a diverse group encompassing many national origins, political viewpoints, and economic and cultural backgrounds. Individuals identifying as South-Asian American...
may have origins in Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan, or Sri Lanka. Broader definitions include those from Afghanistan, Burma/Myanmar, and Tibet. Often, immigrants from the Caribbean, East Africa, and Fiji also identify as South-Asian American. South-Asian Americans may also have varying religious affiliations and speak a diverse group of languages.

Like other immigrant communities, South-Asian Americans tend to maintain their own cultural and religious values while assimilating into the mainstream. Awareness of the diversity of South Asians and awareness of relevant cultural mores among legal professionals will better ensure that South Asians have access to legal services. This awareness is also important to the success of South-Asian lawyers in the profession. In 2001, South-Asian attorneys in Washington formed the South Asian Bar Association of Washington (SABA). SABA is committed to identifying and advancing areas where economic, social, and political interests intersect with South-Asian legal issues. SABA can serve as a resource for your South Asia-related questions. For more information, visit www.sabaw.org.


Column co-editors are Beth Barrett Bloom and Maureen A. Mannix. For feedback, e-mail laborlaw@frankfreed.com.

PLEASE NOTE: Henry Cruz and the board of the LBAW were the sole authors of the Diversity and the Law article, “What Are They So Afraid of? Facts and Myths About Immigration,” which appeared in the December 2006 Bar News.

NOTES
1. 261 U.S. 204 (1923).
The Perils of Signing for Clients: Why Shortcuts Are Not Worth It

by Kevin Bank and Debra Slater

I

t’s Friday afternoon. You’re alone in your office. The clock reads 15 minutes to five. You think to yourself, “Where is my client?” You dial the client’s telephone number. No answer. You pace the floor in your office. The clock now reads 10 minutes to five. You dial the client’s cell phone number. No answer. Time is running out. “This declaration is based on my client’s personal knowledge, but it must be filed today,” you mutter under your breath. “If I don’t file this declaration, I will lose an important motion and the case.” You grab the declaration and sign your client’s name. “I know this client fairly well and am certain she wouldn’t mind,” you rationalize. “Furthermore, it’s in her best interest.” Is it permissible to sign your client’s name on the declaration to be filed with the court?

Tempting though it may be to do so, the answer is no. Although General Rule 13 and RCW 9A.72.085 permit the use of unsworn declarations in lieu of notarized affidavits, such unsworn declarations must be signed by the declarant, certifying under penalty of perjury that the contents are true and correct. RCW 9A.72.085 specifically delineates the requirements for a declaration in lieu of affidavit. The declaration must: (1) recite that it is certified or declared by the person to be true under penalty of perjury; (2) be subscribed by the person; (3) state the date and place of its execution; and (4) state that it is so certified or declared under the laws of the state of Washington. Through his/her signature, the declarant certifies or declares “under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.”

By signing the client’s name on the declaration in the scenario above, you could violate several Rules of Professional Conduct. RPC 8.4(b), which prohibits criminal conduct, is implicated, because the conduct constitutes a crime, such as forgery, false swearing, or offering a false statement for filing. RPC 8.4(c), which does not require evidence of criminal conduct, prohibits a lawyer from engaging in conduct involving dishonesty, fraud, or misrepresentation. RPC 3.3(a)(1) prohibits a lawyer from knowingly making a false statement of fact or law to a tribunal, while RPC 3.3(a)(4) prohibits a lawyer from offering evidence the lawyer knows to be false. Furthermore, a lawyer is prohibited from making a false statement of material fact or law to a third person under RPC 4.1.

Two recent discipline cases indicate that misrepresentation of signatures is very serious misconduct. In In re Disciplinary Proceeding Against Guanero, 152 Wn.2d 51, 93 P.3d 166 (2004), the lawyer was disbarred for, among other things, forging his client’s signature on an unsworn declaration. Guanero had received the original declaration (signed under penalty of perjury) from his client for filing in support of an opposition to a summary judgment motion. The signature page of the declaration was mistakenly not copied by Guanero’s assistant. Therefore, the copies received by the judge and opposing counsel were missing the signature page. Two days after Guanero filed and served the opposition motion, Guanero’s opposing counsel moved to strike the declaration for improper form. The next day, based on Guanero’s assurance that he could produce a signed copy of the declaration that day, the judge allowed argument on the motion to go forward. The judge denied the summary judgment motion but directed Guanero to fax a copy of the executed signature page to the court and opposing counsel by 4:30 p.m. on the day of her ruling. Guanero returned to his office at around 3:30 p.m. and asked his secretary to call the client to come in and sign another declaration. The client could not be reached and Guanero could not locate the original signature page, so he printed out a new blank signature page and signed an imitation of the client’s signature on the declaration. He then faxed copies to the court and opposing counsel.

After upholding the hearing officer’s findings that Guanero had in fact affixed his client’s signature on the document without her permission, the Court concluded that Guanero had violated RPC 8.4(b) (based on committing the crimes of forgery and offering a false instrument for filing), 8.4(c), 8.4(d) (conduct prejudicial to the administration of justice), as well as 3.3(a)(1) and 3.3(a)(4).

In a subsequent stipulated case, R. Stuart Phillips was disbarred after admitting that he had signed his client’s name under penalty of perjury on various documents submitted to the court in a domestic-relations case, including a trial affidavit and Child Support Worksheet. Phillips had not received authorization from his client to sign the documents, and the client had not reviewed them before they were signed. Although In re Disciplinary Proceeding Against Christopher, 153 Wash.2d 669, 105 P.3d 976 (2005) did not involve misuse of a client signature, it provides another example of the perils involved when lawyers forge signatures. Christopher was suspended for 18 months for forging her secretary’s signature on a Declaration of Mail Service (without the secretary’s knowledge or approval) and falsifying other documents submitted in support of a motion for attorney’s fees.
When specifically authorized to do so by the client, and in the absence of any evidence of misrepresentation by the lawyer, it may be possible for a lawyer to sign the client’s name to a letter or other non-official document without running afoul of the RPCs as long as it is clear to the recipient that the signature is that of the lawyer and not the client (for instance, by writing the client’s name along with the lawyer’s initials or name). You should still be aware that anytime you sign for a client, you may be binding the client, and the client may subsequently dispute that he provided the necessary authorization, or that he received adequate explanation of the document you signed on his behalf. You should therefore make sure that the client not only has granted you express permission to sign, but also that he is fully informed as to the terms of the document. And make sure to document it.

When a lawyer is submitting a declaration, there is simply no acceptable substitute for the client’s original signature. In the example above, you may just have to wait until you can meet with the client and obtain her signature before filing the declaration. If permitted by the court, you may be able to file the unsigned declaration with the understanding that you will substitute or supplement it with a signed version on the day of the hearing. But no matter how urgent the timeline or just the cause, signing a client’s name is a shortcut not worth taking.

Kevin Bank has been disciplinary counsel at the Washington State Bar Association since 1999, and prior to that, worked in a private firm and as a consumer-protection attorney for the Federal Trade Commission. Debra Slater is disciplinary counsel at the Washington State Bar Association. Prior to that, she worked for the Federal Deposit Insurance Corporation and was in private practice. The opinions expressed in this article are the authors’ and are not official or unofficial positions of the WSBA.

NOTES


3. Unsworn declarations that comply with RCW 9A.72.085 will be treated as if they are signed under oath. See, e.g., Manus v. Boyd, 111 Wn. App. 764, 768, 47 P.3d 145 (2002).

4. Note under the revised RPC adopted September 1, 2006, this rule no longer requires that the false statement to the court be “material.” Thus, even if the lawyer were to sign the client’s signature on a declaration that is not likely to affect the outcome of the case, he/she could still violate this rule. Materiality is also not required for RPC 8.4(c), and is not an element of certain crimes involving misrepresentation, like false swearing (RCW 9A.72.040) and offering a false instrument for filing or record (RCW 40.16.030).

5. In fact, the original signature page had been filed with some other loose pleadings at the court clerk’s office.

Opportunities for Service

American Bar Association (ABA) House of Delegates
Application Deadline: March 30, 2007
The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving on the ABA House of Delegates representing the WSBA, to serve the remainder of a two-year term now vacant due to the election of Paula Boggs, a previous WSBA delegate, as the state delegate. The term will commence upon appointment and expire in August 2008. The control and administration of the ABA is vested in the House of Delegates, the policymaking body of the ABA. The House, composed of approximately 550 delegates, elects the ABA officers and board and meets out of state twice a year. Delegate attendance is required. The WSBA’s allowance is $800 per year per delegate. Members have the opportunity to reapply to serve a maximum of three consecutive terms. Those serving on the ABA House of Delegates must be ABA members in good standing throughout their tenure. Submit a letter of interest and résumé to: WSBA Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539, or e-mail barleaders@wsba.org.

Commission on Judicial Conduct
Application deadline: May 15, 2007
The WSBA Board of Governors is seeking applicants interested in serving on the Commission on Judicial Conduct. Two positions are available: one as a member and one as an alternate.

The Commission reviews complaints of ethical misconduct against judicial officers, discusses the progress of investigations, and takes action to resolve complaints. The goal of the Commission is to maintain confidence and integrity in the judicial system by seeking to preserve both judicial independence and public accountability. The public interest requires a fair and reasonable process to address judicial misconduct or disability, separate from the judicial appeals system that allows individual litigants to appeal legal errors.

The Commission consists of 11 members who serve four-year terms — six nonlawyer citizens, three judges, and two lawyers. Each member has an alternate whose term coincides with their corresponding member’s term. The lawyers must be admitted to practice in Washington and are appointed by the WSBA. Incumbents are eligible for reappointment, limited to two terms as an alternate member and two terms as a full member. Letters of interest and résumés are also required for incumbents seeking reappointment. The term for this alternate position will commence on June 17, 2007, and expire on June 16, 2011. Please submit a letter of interest and résumé to WSBA Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or e-mail barleaders@wsba.org.

Further information about the Commission can be found at their website, www.cjc.state.wa.us, or by contacting them at 360-753-4585.
WSBA Presidential Search

The WSBA Board of Governors is seeking applicants for the position of WSBA president for 2008-2009. Pursuant to Article IV (A)(2) of the WSBA Bylaws, the primary place of business of candidates for president for 2008-2009 must be King County. The WSBA member selected to be president will have an opportunity to provide a significant contribution to the legal profession.

Applications for 2008-2009 WSBA president will be accepted through May 15, 2007, and should be limited to a current résumé, a concise application letter stating interest and qualifications, and no fewer than five or more than 10 references. The Board of Governors will consider endorsement letters received by May 18, 2007. Applications and endorsement letters should be sent to the WSBA Executive Director, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539.

Direct contact with the Board of Governors is encouraged. All candidates will have an interview with the full Board of Governors in open session at the June 1 meeting. Following the interviews, the Board will select the president.

Although prior experience on the WSBA’s Board of Governors may be helpful, there is no requirement that one must have been a member of the Board of Governors or had previous experience in Bar activities. The candidate must be willing to devote a substantial number of hours to WSBA affairs and be capable of being a positive representative for the legal profession.

The position is unpaid. Some expenses, such as WSBA-related travel, are reimbursed.

The commitment begins in June 2007 following selection. A one-year term as president-elect will begin at the Annual Business Meeting in September 2007. The president-elect is expected to attend the two-day board meetings held approximately every five to six weeks, as well as numerous subcommittee, section, regional, national, and local meetings. In September 2008, at the WSBA Annual Business Meeting, the president-elect will assume the position as president. During his or her service, the president-elect and president will also be required to meet with members of the Bar, the courts, the media, and public and legal interest groups, as well as be involved in the Bar’s legislative activities. Appropriate time will need to be devoted to communication by letter, e-mail, and telephone in connection with these responsibilities.

The duties and responsibilities of the president are set forth in the WSBA Bylaws.

MCLE Certification for Group 3 (2004-2006)

If you are an active WSBA member in MCLE Reporting Group 3 (2004-2006), you should have received your Continuing Legal Education Certification (C2/C3) form in the license packet that was mailed in early December. The deadline for returning the C2/C3 form to the WSBA was February 1. Any C2/C3 forms delivered to the WSBA or postmarked after March 1 will be assessed a late fee.

Members in Group 3 include active members who were admitted to the WSBA in 1984-1990 or in 1993, 1996, 1999, or 2002. Members admitted in 2005 are also in Group 3 but are not due to report until the end of 2009. Their first reporting period will be 2007-2009; however, any credits earned on or after the day of admittance to the WSBA may be counted for compliance. The Continuing Legal Education Certification (C2/C3) form that you received in your license packet is a declaration that lists all the MCLE Board-approved courses that were in your MCLE online profile for the 2004-2006 reporting period as of mid-October 2006. If you took other courses after mid-October, you can add these to the back of the C2/C3 form when you receive it.

The C2/C3 form, not your online profile, is the official record of MCLE compliance. The original copy of the C2/C3 form must be returned to the WSBA to meet compliance requirements.

All MCLE Board-approved courses that you list on your C2/C3 form must have an Activity ID number. This number is listed in your online MCLE profile and is assigned at the time that the Form 1 for each course is input to the MCLE system.

If you have taken courses that have not yet been approved by the MCLE Board,
To apply for any of the following committee, board, or panel positions, please complete the waiver below and send with a letter of interest and résumé. Deadline is April 1, 2007. Send to WSBA, Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539.

WSBA Character and Fitness Board
The WSBA Board of Governors (BOG) is seeking applications from WSBA members who have been active members for at least seven years for appointment to the Character and Fitness Board. This is a three-year term commencing October 1, 2007. The upcoming vacancies include positions in Districts 2, 7-Central, 7-East, 8, and 9.* Applicants must reside in one of these districts to be considered for appointment. This Board deals with matters of character and fitness bearing on qualifications of applicants for admission to practice law in Washington; conducts hearings on the admission of any applicant; makes recommendations to the BOG and Supreme Court; and considers petitions for reinstatement after disbarment.

WSBA Disciplinary Board
The WSBA Board of Governors is seeking applications from WSBA members who have been active members for at least seven years (ELC 2.3 (b) (2)), to serve a three-year term on the WSBA Disciplinary Board commencing October 1, 2007. The upcoming vacancies include positions in Districts 2, 3, 4, and 7.* The Disciplinary Board carries out the functions and duties assigned to it according to the Rules for Enforcement of Lawyer Conduct adopted by the Supreme Court. The full board meets at least six times a year, reviewing hearing officer decisions and stipulations. Three-member review committees meet at least an additional three times a year and review disciplinary investigation reports and dismissals. Considerable reading and meeting preparation is required; meetings are on Fridays in Seattle; 14 members.

WSBA Lawyers’ Fund for Client Protection Committee
The WSBA Board of Governors (BOG) is seeking applications from active WSBA members for appointment to the Lawyers’ Fund for Client Protection Committee. The upcoming vacancies include positions in Districts 1, 2, 3, 5, 7-West, 8, and 9.* This is a three-year term commencing October 1, 2007. The committee reviews claims for reimbursement of financial loss sustained by reason of an attorney’s dishonest actions; decides claims up to $25,000; and makes recommendations to the BOG on claims for greater amounts. Meets four times a year; 13 members.

WSBA Mandatory Continuing Legal Education (MCLE) Board
The WSBA Board of Governors is seeking applications from active WSBA members for appointment to the MCLE Board. Two positions are available. Members from any district may apply, however preference will be given to those from Districts 1, 2, 4, 6, and 9.* This is a three-year term commencing October 1, 2007. The MCLE Board approves courses and educational programs that satisfy the educational requirements of the mandatory CLE rule and considers MCLE policy issues, as well as reporting and exception situations.

*If you are not sure which congressional district you reside in, please see: www.leg.wa.gov/districtfinder.

To complete your application, please include the waiver with application materials.

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WSBA 2007-2008 Waiver for Committee, Board, and Panel Application

WSBA routinely checks the grievance and discipline files for any records related to applicants. Thus, I waive confidentiality of these materials to WSBA staff and the Board of Governors.

signature
print name
E-mail
WSBA No.

To assist the Board of Governors in ensuring diversity, please provide the following optional information:

American Indian/Alaska Native  Caucasian
Asian  Latin/Latino (Hispanic)
Native Hawaiian/Pacific Islander  Multi-racial
Black/African American  Other

Gender  Male  Female
Disability  Yes  No
City of residence
Employer
Number of years in practice
Area of practice

The Board of Governors expects that appointed members will attend meetings and perform the group’s work as needed. If unable to fulfill this commitment, members may be removed from the committee/board/panel.

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2007-2008 WSBA Application for Committee, Board, and Panel Appointments
please submit Form 1s for these courses immediately to ensure that they are approved before your C2/C3 is due. A "Certificate of Attendance" or other sponsor-provided certification will not be sufficient to receive course credit. If the sponsor has not received course accreditation from the Washington MCLE Board, you must submit a Form 1 application and full agenda for the course in order to receive credit. Because of high volumes from October through February, Form 1s submitted electronically (at http://pro.wsba.org) could take up to four weeks or more to process. Paper Form 1s may take up to six weeks or more to process. If you submit a paper Form 1, you will be notified by mail of its Activity ID number.

If you were not able to meet the credit requirement by December 31, 2006, and need more time to complete your credits, an automatic extension will be granted until May 1, 2007. There is no need to apply for it. However, a late fee will be assessed if you took any courses after December 31 that are needed for compliance or if your C2/C3 form is submitted late. If this is the first reporting period in which you will not meet MCLE compliance requirements, the late fee will be $150. The late fee increases by $300 for each consecutive reporting period you are late in meeting MCLE requirements.

If you have questions about the Form 1 process or MCLE compliance, please contact the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722), or e-mail questions@wsba.org.

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<th>Reporting Group</th>
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<td>Group 3</td>
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<td>December 31, 2008</td>
<td>February 1, 2009</td>
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**Credit Requirements.** The following credit requirements must be met by December 31 of the last year of an active member’s reporting period:

- At least 45 total credits of MCLE Board-approved CLE activities must be taken, which need to include a minimum of 30 live credits and six ethics credits.
- Pre-recorded self-study (A/V) courses cannot be more than five years old, except MCLE Board-approved "skills-based" courses. Pre-recorded self-study courses include the traditional audio-visual (A/V) media of video tapes and cassette tapes. They also include archived webcasts, DVDs, compact discs, and other media with a soundtrack of the MCLE Board-approved course presentation. Written materials should be included with these courses and reviewed prior to claiming credit. In addition, written materials must be purchased by each member, where required by the sponsor, prior to claiming credit.
- Six pro bono credits can be earned per year. Two of these credits are for approved annual training, which must be taken prior to being able to earn credit for the pro bono work. Four pro bono credits may be earned each year if at least four hours of pro bono work were provided through a qualified legal services provider.

**Carry-over CLE Credits.** Carry-over credits from the previous reporting period may be used to meet the requirements of the current reporting period. If your current reporting period credits total exceeds 45, you may carry over a maximum combined total of 15 credits to your next reporting period. Only two ethics credits and five A/V credits may be carried over.

**C2/C3 Reporting Requirement.** All active members due to report are required to file a Continuing Legal Education Certification (C2/C3) form listing all CLE courses taken for credit compliance. The deadline for filing your C2/C3 form is February 1 of the year following the end of your reporting period. Note:
- Your online roster is not a substitute for filing the C2/C3 form.
- The C2/C3 form is a declaration and must be signed and dated, and the city and state where signed must be identified.
- C2/C3 forms are included in the license packets sent in early December to all members due to report (Group 3 members this year).
- All CLE courses listed on member rosters as of October 2006, are printed on the back of the C2 form. If you took more CLE courses after October 1, and if they appear on your online roster and you do not want to hand-write them on the back of the C2 form, you may print a copy of your roster and attach it to your C2/C3 form. State on your C2/C3 form that the attached online roster print-out is a true and correct statement of the CLE courses taken for credit compliance.
- You must verify that the credit hours listed on the C2/C3 and on your online profile correctly reflect the hours actually attended for each CLE. You can edit credits online by clicking on the “edit” link next to each...
course. You can correct credits on the C2/C3 manually.

- The C2/C3 form should be filed by February 1, even if all the credits needed for compliance have not been completed.

**MCLE Late Fees.** All active members who have not completed their credits by December 31 of the last year of their reporting period, or who submit their C2/C3 reporting forms after March 1 of the following year (the end of the grace period after the February 1 deadline), must pay a late fee. The late fee for the first reporting period of noncompliance is $150 and increases by $300 for each consecutive three-year reporting period of noncompliance.

**Newly Admitted Members.** If you are a newly admitted member, you are exempt from reporting CLE credits for the year of your admission and the following calendar year. If you were admitted in 2005, you will not report for this reporting period (2004-2006) even though you are in Group 3. You will first report at the end of the 2007-2009 reporting period. When you report at the end of your first reporting period, you may claim all CLE credits earned on or after your date of admission to the WSBA.

**MCLE Comity.** If you are an active member of the WSBA and your primary office for the practice of law is in Oregon, Idaho, or Utah, you may meet your Washington mandatory CLE requirements by providing proof of current MCLE compliance from the Oregon, Idaho, or Utah state bar. Only a Certificate of MCLE Compliance from your primary state bar, not a “Certificate of Good Standing” sent with your WSBA C2/C3 form, will satisfy your MCLE requirements in Washington.

**MCLE System — Course Listing and Member Profiles.** You can use the online MCLE system to: review courses taken and credits earned; apply for course approval; apply for writing credit, pro bono credit, or prep-time credit; and search for approved courses being offered. To use the MCLE system, go to the WSBA website at www.wsba.org and click on “MCLE Website” in the upper left corner. On the next screen, click on the “Member” tab, then select “Member Login.” The online instructions lead you through the process of creating a confidential password and beginning to use the system. Online help is available. You may also contact the WSBA Service Center to have corrections made and/or to request an MCLE system instruction booklet at 800-945-WSBA (9722) or 206-443-WSBA (9722), or questions@wsba.org.

**APR 11 Review Project — Input Invited**

The MCLE Board is undertaking a project to review all the rules and regulations that govern mandatory legal education in the State of Washington (APR 11) to update and clarify them. A comprehensive review of APR 11 was last done in 1997-1999 with new rules and regulations being adopted by the Supreme Court in 2000. All members, sponsors, and other stakeholders were invited to give input to this process in February 2007 by responding to an online survey to give feedback on significant MCLE issues. You may also send input to be considered by the Board to the MCLE Board executive secretary, Kathy Todd, at kathyt@wsba.org.

Updates to the APR 11 revision process will be posted on link from the “Mandatory CLE Board” page on the WSBA website at www.wsba.org/lawyers/groups/mcle.

**Online, On-Demand CLEs from WSBA-CLE**

Want CLE credits without having to stir from
Use Your MCLE Homepage to Find Approved CLEs

From your MCLE homepage, you can now find approved live activities that fit your schedule and are in a location that is convenient for you. You can also find live webcasts and teleconferences in which to participate. To use this feature, go to the WSBA website at www.wsba.org and click on “MCLE Web Site” in the upper left corner. On the next screen, click on the “Member” tab, then select “Member Login.” The online instructions lead you through the process of creating a confidential password and using the system. After you log in, you are at your MCLE homepage.

On your homepage, there is a box in the center with a heading banner “MCLE.” Inside that box is a link that says “Search for approved upcoming CLE courses.” Clicking this link brings you to a “Search Approved Activities” box. Enter the city and state in which you would like to find a CLE course. At the bottom of the box there are date fields called “Start Between … And.” The dates default to the next 60 days. You can change the dates in each field to any other date. To find a live webcast, input “Webcast” in the city field and change the state field to “Any.” To find a teleconference, input “Teleconference” in the city field and change the state field to “Any.” If you have any questions about using the MCLE system, online help is available. You can also call the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722), or e-mail questions@wsba.org.

2007 Licensing Packets

Licensing packets were mailed in December 2006. The packet includes your license fee invoice, trust account declaration form and, if applicable, the MCLE certification form. If you have not received your licensing packet, please call the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722), or e-mail questions@wsba.org to request a duplicate. Please note that it is your responsibility to pay your annual license fee, regardless of whether or not you received the licensing packet. Active members must complete, sign and return a Trust Account Declaration and, if applicable, an MCLE Certification. There may be other forms included in the packet that you wish to complete and return such as updating your contact information or reporting pro bono hours.

If you are paying your fees online. To pay your fees online, go to www.wsba.org, click on the “For Lawyers” tab, and select “Pay License Fee Online.” Sign in with your WSBA Bar Number and password. Prompts lead you through the process to pay your 2007 license fees by MasterCard or Visa. The system allows payments only for the full amount billed. e.g., no Keller deductions or status changes. Note that you do not need to return the A2 form if you pay online. If you are an active member, there are other forms in the packet that must be postmarked or delivered to the WSBA office by the due date. There are other voluntary forms in the packet that you may want to complete and return to the WSBA as well.

If you are mailing your forms and payment. The return envelopes for your forms and payments have instructions on the reverse side for improvement in processing and ease of use. Please review them carefully before mailing your forms and payment. Use the white envelope for returning your licensing form (A2) with a check payment. Use the blue envelope for your licensing form when making a payment by credit card. Also use the blue envelope for mailing the Trust Account Declaration, MCLE Certification, and any voluntary forms.

Trust Account Declaration. The Trust Account Declaration included in your licensing packet must be completed by all active members regardless of whether or not you have a trust account. Failure to file this form can result in disciplinary action.

Payment deadline. Please note that if your payment is postmarked or delivered in person to the WSBA offices later than March 1, 2007, WSBA Bylaws require a 20 percent late fee to be assessed. Also, if your payment is postmarked or delivered in person to the WSBA offices after April 2, 2007, a 50 percent late fee will be assessed.

Presuspension Notice. A presuspension notice will be issued in mid-March to those members who have not paid their 2007 license fees. If you receive a presuspension notice and have paid your license fees, you can confirm receipt by the WSBA 10 days after you sent your payment by checking online at http://pro.wsba.org or contacting the WSBA.
Important note about paying your fees
If any portion of the license fee, penalty, or assessment remains unpaid two months after the WSBA issues a Presuspension Notice, the Supreme Court will enter an order suspending you from the practice of law in this state.

WSBA Members on Active Military Duty
WSBA Bylaw I.E.1.b., providing for a fee exemption for eligible members of the Armed Forces, was amended in March 2006. Please contact the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722), or questions@wsba.org; or contact Kevin McKee at kevinm@wsba.org or 206-727-8243 or 800-945-9722, ext. 8243, for application information. All requests for exemption must be postmarked or delivered to the WSBA offices on or before March 1.

How has the Armed Forces Exemption changed?
Not all active Armed Forces members stationed in the United States will be eligible for consideration unless activated from reserve status to full-time active duty. This must be for more than 60 days of the applicable licensing year. Additionally, those who are deployed or stationed outside the United States for any period of time for full-time active military duty will still be considered for eligibility. Members must submit satisfactory proof that they are so activated, deployed, or stationed.

Contact Information
Please check that the WSBA has your correct contact information in its database. APR 13.b states address updates shall be provided to the WSBA within 10 days after the change. APR 13(c) provides as follows:

Electronic mail address: An attorney should advise the Washington State Bar Association of a current business electronic mail address if one exists. An attorney whose business electronic mail address changes should, within 10 days after the change, notify the Executive Director of the Washington State Bar Association, who shall forward changes weekly to the Office of the Clerk of the Supreme Court for entry into the state computer system. Use of electronic mail addresses for court notice, service and filing must comply with GR 30.

You can go to the online lawyer directory on the WSBA website at http://pro.wsba.org to check your listing. If your contact information has changed, please complete and return the Contact Information Change form included in the license packet. Forms should be returned to the address shown on the form or by fax to 206-727-8313, or e-mail the changes to questions@wsba.org.

More Information
Full explanations of license fees, forms, policies, and deadlines are on the WSBA website at: www.wsba.org/lawyers/licensing/annuallicensing.htm. Also, the WSBA Service Center is available to assist you Monday through Friday, 8:00 a.m. to 5:00 p.m., at 800-945-WSBA (9722), 206-443-WSBA (9722), or by e-mail at questions@wsba.org.

2007 WSBA Awards Nominations Sought
Each year, members of the WSBA are asked to identify those who deserve the legal profession’s recognition and appreciation. Nominations are sought for the following awards:

Award of Merit. First given in 1957, this is the WSBA’s highest honor. The Award of Merit is most often given for long-term service to the Bar and/or the public, although it has also been presented in recognition of a single, extraordinary contribution or project. It is awarded to individuals only — both lawyers and nonlawyers.

Professionalism Award. This honor is awarded to a member of the WSBA who exemplifies the spirit of professionalism in the practice of law. “Professionalism” is defined as the pursuit of a learned profession in the spirit of service to the public and in the sharing of values with other members of the profession.

Angelo Petruss Award for Lawyers in Public Service. Named in honor of the late Angelo R. Petruss, a senior assistant attorney general who passed away during his term of service on the WSBA Board of Governors, this award is given to a lawyer in government service who has made a significant contribution to the legal profession, the justice system, and the public.

Outstanding Judge Award. This award is presented for outstanding service to the bench and for special contribution to the legal profession at any level of the court.

Pro Bono Award. This award is presented to a lawyer, nonlawyer, law firm, or local bar association for outstanding efforts in providing pro bono services. This award is based on cumulative efforts, as opposed to a lawyer’s or group’s pro bono hours or financial contribution.

Courageous Award. This award is presented to a lawyer who has displayed exceptional courage in the face of adversity, thus
bringing credit to the legal profession.

**Excellence in Diversity Award.** This award is made to a lawyer, law firm, or law-related group that has made a significant contribution to diversity in the legal profession’s employment of ethnic minorities, women, persons with disabilities, and other persons of diversity.

**Outstanding Elected Official Award.** This award is presented to an elected official for outstanding service, with special contributions to the legal profession. It is awarded to an individual who has demonstrated a commitment to justice beyond the usual call of duty.

**Lifetime Service Award.** This is a special award given for a lifetime of service to the WSBA and the public. It is given only when there is someone especially deserving of this recognition.

**President’s Award.** The President’s Award is given annually in recognition of special accomplishment or service to the WSBA during the term of the current president.

**Excellence in Legal Journalism Award.** This award recognizes that describing the context, facts, and players involved in the legal system with fairness and sensitivity requires intelligence, knowledge, dedication, and skill. This award is given to the journalist and his/her organization that has set the standard for relevance, clarity, accuracy, and understanding in reporting.

**Community Service Award.** This award was created in 2006. Lawyers are known for giving generously of their time and talents in service to their communities. This award recognizes exceptional non-law-related volunteer work and community service.

**Award presentation:** It is important to note that presentation of any WSBA award is made only when there is a truly deserving recipient. Some years, no award is given in some categories. Awards are limited to one recipient per category, except when a group of individuals earned the award together.

**Nomination submissions:** If you know an individual who fits the criteria set forth above, please visit [www.wsba.org/barleadershomepage.html](http://www.wsba.org/barleadershomepage.html) and complete and submit the nomination form. Self-nominations will not be accepted. Please note that the completed nomination form must accompany each nomination in order to be considered. The deadline for Pro Bono Award nominations is March 31, 2007. The deadline for all other nominations is April 30, 2007. Please send nominations to: Washington State Bar Association, Attn: Annual Awards, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; Fax: 206-727-8319; E-mail: denec@wsba.org.

The awards will be presented at the WSBA Annual Awards Dinner in Seattle on September 20, 2007, with the following exceptions: The Pro Bono Award will be presented at the Access to Justice Conference in Wenatchee on June 2, and the Outstanding Judge Award will be presented at the Fall Judicial Conference.

**YMCA Mock Trial Program Seeks Volunteer Attorneys and Judges**

The YMCA Youth and Government Mock Trial program allows high-school students to participate in a “true-to-life” courtroom drama. Each team of attorneys and witnesses prepare the case for trial before a real judge in an actual courtroom. A “jury” of attorneys rates the teams for their presentation while the presiding judge rules on the motions, objections, and, ultimately, the merits. Participants develop critical thinking and analytical skills, learn the art of oral advocacy, and gain a respect for the role of law and the judiciary.

The state championship competitions will be held Friday, March 23, through Sunday, March 25, at the Thurston County Courthouse in Olympia. Volunteer attorney raters and judges are needed. To volunteer, contact Janelle Nesbit at 360-357-3475 or youthandgovexec@qwest.net. Visit [www.youthandgovernment.org](http://www.youthandgovernment.org) for more details. This program is sponsored in part by the Washington Young Lawyers Division.

**WSBA Holds Public Records Act Deskbook Reception**

At a reception held in Seattle on October 24, 2006, WSBA President Ellen Conedera Dial and Washington State Attorney General Rob McKenna recognized the volunteer editors and authors of the WSBA’s *Public Records Act Deskbook*. The deskbook was a three-year effort by 18 chapter authors and editors, with attorneys participating from Spokane to Aberdeen. Attorney General McKenna wrote the preface for the *Deskbook* and thanked the many authors who are current or former members of the Attorney General’s Office. President Dial noted the joint effort of private-sector and public-sector attorneys and highlighted the excellent work of the WSBA CLE Department’s editing and production of the *Deskbook* (which was finished ahead of schedule). The *Public Records Act Deskbook: Washington’s Public Disclosure and Open Public Meetings Laws*
is available for purchase through the WSBA website (go to www.wsba.org and click on “WSBA store” in the left column), or by calling the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722). "There has long been a need for a comprehensive treatise on Washington's open-government laws, and I’m glad the WSBA and these volunteer attorneys took on the challenge of writing it. It will help citizens and agencies alike," said McKenna.

**WYLD President-Elect and Trustee Applications Sought**

Young lawyers interested in serving on the WYLD Board of Trustees are invited to submit applications for the following positions: trustee, at-large; trustee, King County District; trustee, Snohomish County District; trustee, Southwest District; trustee, Spokane County District; and president-elect, Washington state.

Applications must be received by 5:00 p.m. on Tuesday, May 1, 2007. For detailed information and application instructions, please visit www.wsba.org/lawyers/groups/wyld/default.htm.

**Contract Lawyer Meeting**

The WSBA Law Office Management Assistance Program (LOMAP) hosts a meeting of contract lawyers the second Tuesday of every month at the WSBA’s conference room facility. The next meeting is March 13 from noon to 1:30. Bring your lunch — coffee is provided — and network with other contract lawyers. Please note the WSBA’s new address: 1325 Fourth Ave., Ste. 600, Seattle.

**LAP Solution of the Month: Job Satisfaction**

Many lawyers are depressed but don’t realize it. Symptoms include depressed mood, loss of pleasure or interest in activities, weight gain or loss, sleep problems, feeling restless or slowed-down, fatigue, trouble thinking or concentrating, and thoughts of death. Untreated, it can cause serious work dysfunction and more. Talk to your doctor, or call the Lawyers Assistance Program at 206-727-8268 or 800-945-9722, ext. 8268.

**Casemaker Access**

Casemaker is a powerful online research library provided free to WSBA members. To access Casemaker, go to the WSBA website at www.wsba.org and click on the Casemaker logo on the right sidebar to access the Casemaker homepage. Click on the Casemaker button to begin. For help using Casemaker, you can contact the WSBA Service Center at 800-945-WSBA (9722), or 206-443-WSBA (9722), or e-mail questions@wsba.org.

**Computer Clinic**

The WSBA offers a hands-on computer clinic for members wanting to learn more about what Microsoft Office programs — Outlook, PowerPoint, Excel, and Word — as well as Adobe Acrobat, can do for a lawyer. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Computers are provided, and seating is limited to 15 members. There is no charge, and no CLE credits are offered. The next clinic will be held on March 12 from 10 a.m. to noon at the WSBA office. For more information, contact Pete Roberts at 206-727-8237 or 800-945-9722, ext. 8237, or peter@wsba.org. Please note the WSBA’s new address: 1325 Fourth Ave., Ste. 600, Seattle.

**Problem Getting a Client to Pay?**

Dispute with another lawyer or an expert witness? The WSBA offers two programs to aid in the resolution of disputes involving lawyers. These programs serve both members and the public. The Fee Arbitration Program focuses on fee disputes between a lawyer and his or her client. To participate, both parties must agree to be bound by the arbitrator’s decision. The Mediation Program provides a venue for parties to work together to resolve any dispute involving a lawyer, including those between a lawyer and a client, a lawyer and another lawyer, and a lawyer and another professional. Either party to a dispute may initiate fee arbitration or mediation. Both programs are nondisciplinary, voluntary, and confidential. For more information, visit the WSBA website at www.wsba.org/lawyers/services/adr.htm or call the ADR coordinator at 206-733-5923 or 800-945-9722, ext. 5923.

**Facing an Ethical Dilemma?**

The WSBA Ethics Line can help members analyze a situation involving their own prospective conduct, apply the proper rules, and reach an ethically sound decision. Calls made to the Ethics Line are confidential, and most calls are returned within one business day. Any advice given is intended for the education of the inquirer and does not represent an official position of the WSBA. Call the Ethics Line at 206-727-8284 or 800-945-9722, ext. 8284.

**Search WSBA Ethics Opinions Online**

Formal and informal WSBA ethics opinions are available online at http://pro.wsba.org/io/search.asp, or from a link on the WSBA homepage, www.wsba.org. You can search opinions by number, year issued, ethical rule, subject matter, or keyword. Ethics opinions are issued by the WSBA to assist members in interpreting their ethical obligations in specific circumstances. The opinions are the result of an official position of the WSBA. Call the Ethics Line at 206-733-5923 or 800-945-9722, ext. 5923.

**Accounts Receivable Collection**

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of study and analysis in response to requests from WSBA members. For assistance, call the Ethics Line at 206-727-8284 or 800-945-9722, ext. 8284.

Job Seekers Discussion Group
Looking for a job or making a transition? Join us at the Job Seekers Discussion Group the second Wednesday of each month from noon to 1:30 p.m. The next meeting is March 14 at the WSBA office. The group discusses where to look for jobs, how to use your network of contacts, strategies for résumés and cover letters, and how to keep yourself organized and motivated. Exchange information and ideas with other lawyers looking to make a change. Come as you are — no need to RSVP. For more information, call 206-727-8268 or 800-945-9722, ext. 8268, or e-mail rebeccan@wsba.org. Please note the WSBA’s new address: 1325 Fourth Ave., Ste. 600, Seattle.

Speakers Available
The WSBA Lawyers Assistance Program offers speakers for engagements at county, minority, or specialty bar associations, or other law-related organizations. Topics include stress management, life/work balance, and recognizing and handling problem-personality clients. Contact Jennifer Favell, Ph.D., at 206-727-8267 or 800-945-9722, ext. 8267.

Assistance for Law Students
The Lawyers Assistance Program offers counseling to third-year law students attending Washington schools. Sessions are held in person or by phone. Treatment is confidential and available for depression, addiction, family and relationship issues, health problems, and emotional distress. A sliding-fee scale is offered ranging from $0–30, depending on ability to pay. Call 206-727-8268, or 800-945-9722, ext. 8268, or visit www.wsba.org/lawyers/services/lap.htm.

Help for Judges
The WSBA Judges Assistance Program provides confidential assistance to judges experiencing personal or professional difficulties. Telephone or in-person sessions are available on a sliding-scale basis. For more information, call the program coordinator at 206-727-8268 or 800-945-9722, ext. 8268.

Learn More About Case-Management Software
The WSBA Law Office Management Assistance Program (LOMAP) office maintains a computer for members to review software tools designed to maximize office efficiency. The LOMAP staff is available to provide materials, answer questions, and make recommendations. To make an appointment, contact Julie Salmon at 206-733-5914, or 800-945-9722, ext. 5914, or juliesa@wsba.org.

Upcoming Board of Governors Meetings
April 13–14, Kelso • June 1, Wenatchee • July 27–28, Quincy
With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Contact Donna Sato at 206-727-8244, 800-945-9722, ext. 8244, or donnas@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/info/bog/schedule.htm.

Usury Rate
The average coupon equivalent yield from the first auction of 26-week treasury bills in February 2007 was 5.153 percent. Therefore, the maximum allowable usury rate for March is 12 percent. Information from January 1987 to date is on the WSBA website at www.wsba.org/media/publications/barnews/usury.htm.

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Springboard Non-Profit Consumer Credit Management has been approved to provide Pre-petition Bankruptcy Counseling, Pre-discharge Education, Attorney Reports, and other services for clients. Springboard is a non-profit consumer credit counseling agency. For more information, please visit www.bkhelp.org.
The applicant paid Betker $3,000 in connection with a medical-malpractice case. Betker said the funds would be used to pay doctors to review the applicant’s medical records. There is no evidence that any records were reviewed. The applicant learned that Betker was in trouble with the Bar, and met with her in her office and asked for his money back. She responded that she would have to figure out how much the applicant owed her. He has never received any refund or accounting for the money he gave her. Betker provided a brief response to this application claiming the money was earned as fees. The Committee approved payment of $3,000 to the applicant.

Stephen B. Blanchard — WSBA No. 12294 (Edmonds) — six-month suspension, effective 10/12/06

The applicants sought Blanchard’s representation regarding loans they had made to the applicants’ son totaling $187,592.87, secured by a promissory note. The son filed for bankruptcy and failed to make payments on the promissory note. Through the bankruptcy, two real properties were sold and the applicants received the proceeds. A third piece of property (Lot A) remained part of the bankruptcy estate.

Blanchard sent the applicants a bill for $229.71. He then phoned the applicants and requested $1,000 so that he could seek authorization for the sale of Lot A, which they paid. Blanchard deposited the $1,000 into his general account, not his trust account. He did not pursue the foreclosure on Lot A.

The applicant requested an accounting for the moneys paid to Blanchard. He said he would send an accounting. Blanchard did not make further contact with the applicant and did not provide an accounting or any paperwork regarding the money paid. Blanchard does not have any records to demonstrate that he earned the $770.29 difference that was paid in excess of the $229.71 billed. The Supreme Court opinion suspending Blanchard states: “Mr. Blanchard has not denied that he retained an unearned portion of [the applicant’s] fee even after his services were terminated.” They ordered restitution of $770.29, and the Committee approved payment of that amount.

Robert E. Brandt — WSBA No. 23058 (Kirkland) — Disbarred

Brandt did business as Escrow Authority, which he operated out of his law office. For further background, see the Lawyers’ Fund report in the December 2006 Bar News.

**Application 1.** The applicants refinanced their home and Brandt’s office handled the closing. Escrow Authority issued a check for $42,002.48 which was paid to Bank of America to pay off the applicants’ line of credit. A few weeks later, the bank notified the applicants that the Escrow Authority check had been returned NSF. The applicants called Escrow Authority and learned it was closed. Their claims to Brandt’s insurer and the title insurance company were denied. The Committee recommended and the Trustees approved payment to the applicants of $42,002.48. The applicants wrote in response: “My husband and I are both speechless. You and the board have truly made us extremely happy and very relieved. Words cannot express how thankful we are. Thank you. Thank you!”

**Application 2.** The applicant paid $10,000 to Escrow Authority as earnest money in a real-estate transaction. The transaction fell through and Escrow Authority refunded his $10,000 by check which was returned NSF. After several attempts, the applicant reached Brandt by phone. Brandt told him that some money was to be “released” the next day and to call him back. That was the last time the applicant was able to reach Brandt. He has never received his funds. The Committee approved payment of $10,000 to the applicant.

**Application 3.** The applicant sold property he inherited from his mother’s estate. Prior to the closing, his lawyer wrote to Escrow Authority regarding a claim made for a judgment against the property in the amount of $21,460.26. In the letter, he said that the applicant was contesting the claim, and he instructed Escrow Authority to withhold distribution of that amount until the matter could be resolved. Escrow Authority responded that they would withhold $21,566.26, which included per diem interest. Subsequently, the parties agreed to disbursement of the funds. By that time, Escrow Authority was closed and the funds were never disbursed or accounted for. The Committee approved payment of $21,566.26 to the trust account of the applicant’s lawyer.

Christopher P. Eichhorn — WSBA No. 7427 (Tacoma) — two-year suspension, effective 11/7/05

The applicant hired Eichhorn to represent her in dissolution of marriage. They agreed that he would charge an hourly fee, which would be deducted from all payments received. There was no written fee agreement. The applicant paid Eichhorn $650, and agreed to make payments of $200 thereafter. Eichhorn deposited the $650 into his general business account even though it was not fully earned.

A dissolution trial was held, and after the trial Eichhorn told the applicant that he would file the final paperwork. Despite repeated requests from the applicant, he did not do so until several months later. The applicant asked Eichhorn for an itemized bill. By this time, she had paid Eichhorn $4,650. Eichhorn told her that her bill was around $3,000, and he agreed to send her a written bill. Eichhorn never sent a bill or accounting. He never refunded any money to the applicant. In his disciplinary proceeding, he stipulated to refund $2,300. The Committee approved payment of that amount.

Donna L. Johnston — WSBA No. 23630 (Seattle) — Active

The applicant paid Johnston $250 to seek expungement of a 1996 assault conviction. He said he wanted this to be done quickly because he was applying to dental school and was concerned about disclosure of the conviction on his applications.

Johnston contacted the Superior Court Clerk’s office and discovered that the applicant’s file could not be located. Despite this, Johnston wrote to the school to which the applicant was applying that he qualified for expungement of his conviction. Later, Johnston learned that the applicant’s conviction was for domestic assault which required a five-year waiting period prior to expungement, but because the applicant had not paid all restitution and costs that he owed, a bench warrant had been issued in 1998, and as a consequence the five-year period had not begun running. The prosecutor

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agreed to quash the warrant if the applicant paid what he owed, and to issue a certificate that would commence the five-year waiting period. Johnston did not advise the applicant of any of this. Johnston stipulated that her conduct violated RPC 8.4(c) (dishonesty) and agreed to pay the applicant restitution of $250 by the end of August. She has not done so. The Committee approved payment of $250.

**Bernie W. Potter — WSBA No. 23076 (Seattle) — Disbarred**

Potter was ordered disbarred in connection with other matters. The hearing officer found that Potter “engaged in a pattern of misconduct when dealing with client funds and funds to be used to reimburse Personal Injury Protection (PIP) payments made by insurance carriers on behalf of his clients. This pattern consistently benefited Respondent [Potter] to the detriment of the clients and insurers.” He recommended that Potter make restitution to various individuals and that he make “Restitution to the Lawyers’ Fund for Client Protection for any additional amounts paid out as a result of Respondent’s misconduct plus interest at 12 percent.” The Disciplinary Board approved that recommendation. Potter did not respond to these Fund applications.

**Application 1.** The applicant had been represented by Attorney A and Attorney B who had filed a personal injury lawsuit, but failed to serve the defendant and the statute of limitations expired. She was then represented by Attorney C who refiled the suit in the hopes that the insurer would not notice the statute of limitations issue, but they did, and the applicant’s new case was dismissed.

Potter refiled the lawsuit against Attorneys A and B. The defendants asserted that Attorney C had not fought the dismissal hard enough. He advised the applicant to refile the suit and name him as a co-defendant so that there would not be an “empty chair.” Potter refiled the lawsuit against Attorneys A, B, and C, and also filed suit against another party involved in a second traffic accident. The claim against Attorney B was settled for $40,000, and the claim against the other parties was settled for $20,000. Payments were made to Potter.

The applicant and Potter originally agreed that his fee would be one-third if the matter settled or 40 percent if it went to trial. When the case settled, Potter agreed to reduce his fee to 10 percent, or $6,000, because “his original promises of how much I should have received were reduced due to some fault of his.” Potter paid her $5,000 from the settlements, and said he was holding the balance until he determined the costs to be paid out, including medical fees and costs in the remaining suit against Attorney A. He later told her the total costs would be about $10,000 and she would receive about $35,000. Despite repeated promises to pay her, Potter never did so. He also failed to pay her medical providers’ bills.

The Committee determined that, because of Potter’s failure to account for the $55,000 he retained from the settlements and the lack of evidence that he paid any costs on behalf of the applicant, it appeared that from the $60,000 he received on the applicant’s behalf, he paid her $5,000 and was entitled to pay himself $6,000, which leaves $49,000 unaccounted for. The Committee recommended and the Trustees approved payment of that amount to the applicant.

**Application 2.** The applicant, a minor, was represented by Potter in a personal-injury claim that was settled for $6,000. The settlement order said that either a parent or a guardian ad litem (GAL) could sign a release on behalf of the applicant. It allowed attorney’s fees to Potter of $2,000. GAL fees were to be paid directly by the insurer, and the net proceeds of $4,000 were to be paid to the applicant. Because the applicant was a minor, Potter was ordered to place the funds in a blocked account and file a receipt with the court. He never did this. He never accounted for or paid the funds to the applicant. The Committee approved payment of $4,000 to her.

**Application 3.** Potter represented the applicants’ son on theft-related charges. He was already representing the applicants on personal-injury claims arising from a car accident. Potter entered a Notice of Appearance and appeared at arraignment. There appears to have been no other action in the case.

Potter settled the personal-injury claims for $18,890.75 for Applicant A and $11,300 for Applicant B. He prepared disbursements showing net recovery to A of $4,801.05 and for B of $3,520. According to their grievance, Potter told the applicants that their son’s case was very serious, and he would need $8,100 more to represent him, which he paid himself from their settlement funds. Potter took no further action on the applicants’ son’s case, and never rendered...
any billing or accounting for the $8,100. The Committee approved payment of that amount to the applicants.

E. Armstrong Williams — WSBA No. 30361 (Spokane) — Suspended, recommendation for disbarment pending

Williams abandoned his law practice, and his whereabouts have been unknown since September 2004. He was suspended for non-payment of licensing fees on July 28, 2004. He was also ordered to receive a disciplinary suspension for 60 days effective March 3, 2005.

**Application 1.** The applicant paid Williams $1,500 for representation on a charge of possession of marijuana. A pretrial hearing date was set but neither Williams nor the applicant appeared, and a bench warrant was issued. The applicant called the court and told them that he could not contact Williams. The bench warrant was withdrawn and a new pretrial hearing date was set.

When Williams was suspended from practice, he did not notify the applicant or the court, nor did he make any arrangement for the applicant’s representation. The hearing officer found that the applicant had paid Williams $1,500, that Williams did nothing to earn that fee other than appear for arraignment, and that Williams failed to return unearned fees. He recommended restitution of $1,500, and the Committee approved payment of that amount.

**Application 2.** The applicant paid Williams $2,000 for representation regarding a parenting-plan modification. Williams filed a Motion and Order re: Contempt and a Declaration in Support of Proposed Parenting Plan. The applicant’s subsequent lawyer found that these were deficient in many respects, including that some were not completely filled out and at least one was missing a page. Williams did not notify the applicant of his suspension, nor did he take any steps to protect his interests. The hearing officer found that “the little work that [Williams] did perform was incomplete, contained errors, and had to be redone by another lawyer that [the applicant] hired to represent him.” He recommended restitution to the applicant of $2,000, and the Committee approved payment of that amount.

**Other Business:** The Committee reviewed 20 additional applications that were denied for lack of evidence of dishonest conduct, as fee disputes or claims for malpractice, as civil disputes, or because restitution was made. Four applications were continued to seek further information. The committee also voted to recommend to the Board of Governors an amendment to the Fund Procedural Rules regarding administrative closure of application files when restitution is made or the application is withdrawn.

**Restitution:** Before payment is made to an applicant, the applicant must sign a subrogation agreement with the Fund, and the Fund seeks restitution from the lawyer. Because in most cases those lawyers have no assets, the chief avenue of restitution is through court-ordered restitution in criminal cases. Prosecuting attorneys cooperate with the fund in getting the Fund listed in restitution orders. As of October 2006, seven lawyers were making regular restitution payments to the Fund.

The committee chair is Bainbridge Island attorney Judy Massong. WSBA General Counsel Robert Welden is staff liaison to the committee.
These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(d) of the Washington State Supreme Court Rules for Enforcement of Lawyer Conduct, and pursuant to the February 18, 1995, policy statement of the WSBA Board of Governors.

For a complete copy of any disciplinary decision, call the Washington State Disciplinary Board at 206-733-5926, leaving the case name, and your name and address.

NOTE: Approximately 30,000 persons are eligible to practice law in Washington state. Some of them share the same or similar names. Bar News strives to include a clarification whenever an attorney listed in the Disciplinary Notices has the same name as another WSBA member; however, all discipline reports should be read carefully for names, cities, and bar numbers.

**Suspended**

A. Graham Greenlee (WSBA No. 890, admitted 1968), of Seattle, was suspended for six months, effective October 15, 2006, by order of the Washington State Supreme Court following a hearing. This discipline was based on his conduct in 2004 involving a conflict of interest. For additional information, see In re Disciplinary of Greenlee, 158 Wn.2d 259, 143 P.3d 807 (2006).

Mr. Greenlee represented a client in a personal-injury matter against multiple defendants arising from an automobile collision. The client was unsophisticated, partially disabled, and had a limited level of understanding. She had not progressed beyond the 10th grade and had never graduated from high school. Mr. Greenlee was aware that the client had memory problems and limited understanding. She was a difficult client who incessantly repeated questions, which Mr. Greenlee and his staff were forced to answer for her. Mr. Greenlee eventually withdrew from her case. The client settled the case on her own with the liability insurers, ultimately receiving a settlement check in her and Mr. Greenlee's name.

Because of his withdrawal, Mr. Greenlee waived any fee in the case but sought reimbursement of $1,595 in costs he had advanced on the client's behalf. When the client went to Mr. Greenlee's office to obtain his endorsement on the settlement check, Mr. Greenlee and the client agreed that the costs advanced to the client would be paid from the settlement funds. The client requested written confirmation from Mr. Greenlee that she owed him no money other than the $1,595 in costs. Mr. Greenlee would agree to do so only if the client released him from any claims she might have against him. Accordingly, Mr. Greenlee prepared a settlement agreement and mutual release between himself and the client. The release, a six-page document written in highly technical language, provided that the client agreed to reimburse Mr. Greenlee the $1,595 in costs, that he disclaimed any further financial obligations owing from her to him, and that she agreed to waive any claims she might have against him. The release states the agreement is a final settlement of "mutual claims and causes of action against one another" and that the client agreed to the extinguishment of "any and all claims she may have against A. Graham Greenlee arising out of the services he provided in his representation." The client signed the release in Mr. Greenlee's reception area. She had no independent counsel review it with her before signing it and was not advised by Mr. Greenlee in writing that it was appropriate to do so.

Mr. Greenlee's conduct violated RPC 1.8(h), which prohibits an attorney from making an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settling a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.

Kevin M. Bank represented the Bar Association. Leland G. Ripley represented Mr. Greenlee at the hearing and on appeal to the Disciplinary Board. Phillip H. Ginsberg represented Mr. Greenlee before the Supreme Court. Marc L. Silverman was the hearing officer.

**Suspended**

Jeffrey T. Haley (WSBA No. 9526, admitted 1979), of Bellevue, was suspended for one year, effective July 27, 2006, by order of the Washington State Supreme Court following a hearing. This discipline was based on his conduct in 1993 involving conflicts of interest. For additional information, see In re Discipline of Haley, 157 Wn.2d 398, 138 P.3d 1044 (2006).

Mr. Haley provided no evidence at the disciplinary hearing. Testimonial evidence was submitted through affidavits and declarations proffered by the Bar Association. Mr. Haley declined to submit any affidavits or declarations supporting his case.

In 1992, Mr. Haley was hired by the owner of a corporation to file a trade-secret lawsuit against a former employee. The former employee counterclaimed, and the client hired Mr. Haley to represent him personally in defending the counterclaim. In August 1993, Mr. Haley filed a notice of intent to withdraw from representation of both the individual client and the corporation on grounds that there had been a falling out between Mr. Haley and the client. Mr. Haley asked another lawyer to take over the case for him; the new lawyer signed and filed a substitution of counsel.

Meanwhile, Mr. Haley obtained from the client a security agreement to secure past, present, and future fees owed to Mr. Haley's firm. The client asked another lawyer, who represented him on an unrelated matter, to review the security agreement. The other lawyer reviewed and revised the agreement, and also advised the client that the agreement to pay fees could be set forth in a letter and that it was not necessary to have a promissory note. Mr. Haley subsequently obtained from the client a letter agreement that provided, in pertinent part: "[N]ew lawyer will be substituted as counsel of record in the case . . . . [N]ew lawyer will send to me bills for his time . . . . We will pay [new lawyer], at a discounted rate, to reflect our risk and advancing of cash, and you will pay us . . . . Interest will accrue at 12% per annum and you may prepay at any time." The letter did not contain the suggestion that the client should seek independent counsel and, according to the client, Mr. Haley never advised him of the consequences of signing the letter agreement, did not advise him of any conflict of interest, and did not give him time or opportunity to consult with independent counsel. Except for the above-described communications with his lawyer in the other matter, the client did not in fact consult another lawyer regarding the letter agreement.

Mr. Haley also discussed with the client how the corporation could finance a settlement agreement for the pending litigation. Mr. Haley said that his firm would finance the settlement in return for
a waiver of any malpractice claims against Mr. Haley and his firm. On September 24, 1993, Mr. Haley and the client entered into a settlement-financing agreement, which included a release of potential claims against Mr. Haley and his firm for improper or inadequate services. Mr. Haley neither disclosed any potential conflict of interest to the client nor did he advise the client that independent representation was appropriate. The client did not in fact consult with another lawyer regarding the agreement. The client’s new lawyer was unaware that Mr. Haley’s law firm had financed the litigation settlement.

The former client made payments pursuant to the September 24 agreement until May 1998. After payments ceased, the former client received a collection letter. As a result, the client filed a grievance against Mr. Haley.

Mr. Haley’s conduct violated RPC 1.8(a), prohibiting a lawyer from entering into a business transaction with a client or knowingly acquiring an ownership, possessory, security, or other pecuniary interest adverse to a client unless the transaction and its terms are fair and reasonable and fully disclosed and transmitted in writing to the client, the client is given opportunity to seek the advice of independent counsel, and the client consents; RPC 1.8(e), prohibiting a lawyer, while representing a client in connection with contemplated or pending litigation, from advancing or guaranteeing financial assistance to his or her client; and RPC 1.8(h), prohibiting a lawyer who is representing a client in a matter from making an agreement prospectively limiting the lawyer’s liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement.

Leslie C. Allen represented the Bar Association. Mr. Haley represented himself. Moses F. Garcia was the hearing officer.

**Suspended**

Karim Hamir (WSBA No. 34296, admitted 2003), of Vancouver, British Columbia, Canada, was suspended from the practice of law for six months, effective September 18, 2006, by order of the Washington State Supreme Court following a stipulation. This discipline was based on conduct in 2004 involving misrepresentations to potential employers and false and misleading statements in advertising materials.

In 2004, Mr. Hamir was seeking employment as a lawyer in the Seattle area. In e-mails sent to two unaffiliated solo practitioners, Mr. Hamir provided information regarding his background and credentials. This information included copies of his résumé, in which he represented that he had graduated from “Michigan Law,” implying that he had attended the University of Michigan Law School. Mr. Hamir’s résumé also represented that he had graduated “with honors,” was in the “top five percent” of his law school class, and had been “Law Review Chief Editor.” In fact, Mr. Hamir had attended Thomas M. Cooley Law School in Lansing, Michigan, held a class rank of 142 out of 189, graduated from law school with no academic honors, and was not selected for the Law Review. Mr. Hamir also represented that he had obtained a “B.A. Honours Business Administration” degree from York University and that he had graduated from York with a grade point average of 3.96 out of 4.00. In fact, he had obtained a Bachelor of Arts in Sociology at York University and had been an average student.

In an e-mail message to one potential employer in June 2004, and in marketing materials he later disseminated to the public, Mr. Hamir represented that he was licensed to practice law in Canada “through the Upper Law Society of Canada.” In fact, Mr. Hamir was not licensed to practice law in Canada through any attorney-licensing entity.

In 2005, Mr. Hamir entered into a partnership with another Washington lawyer for the purposes of practicing law. In advertising materials and on the firm’s public website, Mr. Hamir represented that he had received a “Bachelor’s of Business Administration from New York University, summa cum laude” and had also obtained a Master’s degree. In truth, Mr. Hamir had never attended New York University, had not obtained a degree in business administration, never graduated with the academic distinction of summa cum laude, and never obtained a Master’s degree from any educational institution.

Mr. Hamir’s conduct violated RPC 7.1(a), prohibiting a lawyer from making a false or misleading communication about the lawyer or the lawyer’s services; and RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Kevin M. Bank represented the Bar Association. Kenneth S. Kagan represented Mr. Hamir.

**Suspended**

Clayton E. Longacre (WSBA No. 21821, admitted 1992), of Port Orchard, was suspended for 60 days, effective November 10, 2005, by order of the Washington State Supreme Court following a hearing. This discipline was based on his conduct in 2000 involving failure to provide competent representation to a client, failure to communicate, failure to act with reasonable diligence, and conduct prejudicial to the administration of justice. For additional information, see In re Discipline of Longacre, 155 Wn.2d 723, 122 P.3d 710 (2005).

In May 2000, Mr. Longacre was hired to represent a client charged with drive-by shooting. Because the client planned to pursue a military career, he wanted to avoid a felony conviction. During their first meeting, Mr. Longacre did not go over the contents of the information or advise the client of the sentencing range for the pending charges. The prosecuting attorney subsequently amended the information to include charges of drive-by shooting, assault in the second degree, and a firearm enhancement. The prosecuting attorney faxed Mr. Longacre the amended information and a plea agreement, which specified a sentencing range of 74-84 months and included a 36-month enhancement for the firearm allegation. In exchange for a guilty plea, the prosecuting attorney offered a sentencing recommendation of 62 months and an agreement not to file additional charges. Mr. Longacre did not discuss the proffered plea agreement with the client.

By letter dated May 26, 2000, the prosecuting attorney reiterated the standard range sentence for the pending charges, warned Mr. Longacre that he would amend the information to include four counts of assault in the first or second degree (all to include firearm enhancements), along with the drive-by-shooting, and urged Mr. Longacre to thoroughly consider the 62-month offer. According to the prosecuting attorney, if the information were to be amended as described, the low-end standard-range sentence for the crimes charged would be nearly 51 years. Mr. Longacre did not convey this information to the client.

In June 2000, the prosecuting attorney advised Mr. Longacre by letter that he would be making a 57-month plea offer to a co-defendant, and would extend the same offer to Mr. Longacre’s client. Mr.
Mr. Longacre never communicated this offer to the client. During a psychological evaluation in June 2000, the client told an evaluator that he believed he could be facing up to 46 months. In July 2000, the prosecuting attorney advised Mr. Longacre by letter that based on the client’s apparent choice to go to trial he would arraign the client on a second amended information as described in the May 26 letter. Mr. Longacre did not share this information with the client.

The client was arraigned on the second amended information, which charged four counts each of assault in the first degree and assault in the second degree, all with firearm enhancements, and one count of drive-by-shooting. The case was tried in August 2000 and convicted of four counts of assault in the second degree with a firearm finding and drive-by-shooting. The pre-sentence report included a standard range of 221-246 months based on the convictions. Before sentencing, Mr. Longacre approached the client’s former lawyer and discussed the trial. The lawyer suggested that Mr. Longacre withdraw from the representation, indicating that Mr. Longacre’s conduct could rise to the level of ineffective assistance of counsel. Mr. Longacre moved to withdraw in September 2000. After the motion was granted, the former lawyer took over as counsel and filed a motion for new trial. A new trial was granted on grounds that Mr. Longacre had provided incorrect sentencing information to the client regarding the proper sentencing range and the effect of firearm enhancements. The client ultimately pleaded guilty to a third amended information and was sentenced to 57 months pursuant to a plea agreement.

Mr. Longacre’s conduct violated RPC 1.1, requiring a lawyer to provide competent representation to a client; RPC 1.2(a), requiring a lawyer to abide by a client’s decisions concerning the objectives of representation and consult with the client as to the means by which they are to be pursued; RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of a matter, to promptly comply with reasonable requests for information, and to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; and RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice.

Sachia Stonefeld Powell represented the Bar Association. Mr. Longacre represented himself. David B. Condon was the hearing officer.

**Suspected**

**Eric R. Vargas** (WSBA No. 20364, admitted 1991), of Yakima, was suspended from the practice of law for two years, effective January 4, 2006, by order of the Washington State Supreme Court following a stipulation. This discipline was based on his conduct in 2004 and 2005 involving violations of the Uniform Controlled Substances Act.

In December 2005, Mr. Vargas pleaded guilty in Benton County Superior Court to two felony counts of unlawful possession of controlled substances in violation of RCW 69.50.4013(1). In 2004, Mr. Vargas purchased Percocet from a woman he met after giving an elder law talk at the Kennewick Senior Center. In 2005, he purchased Percocet from the same woman while assisting her with a bankruptcy petition. She contacted the police, who tape-recorded the second transaction.

Mr. Vargas’s conduct violated RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects.


**Reprimanded**

**Gerald L. Casey** (WSBA No. 2587, admitted 1965), of Port Orchard, was ordered to receive a reprimand, effective August 5, 2005, following a stipulation approved by a hearing officer. This discipline was based on his conduct in 2001 and 2002 involving contacting parties known to be represented by counsel.

Mr. Casey represented an injured client in a workers’ compensation claim. In November 2001, Mr. Casey received a letter from a lawyer advising Mr. Casey that he represented the client’s employer and its workers’ compensation claims administrator (Company A), and directing Mr. Casey to send all correspondence regarding the matter to him. Upon receipt of the letter, Mr. Casey sent the lawyer a letter acknowleding the lawyer’s appearance. Although he disagreed with the assertion that he was precluded from contacting Company A, stating that it was common practice for the employee’s lawyer to communicate with the workers’ compensation plan administrator, Mr. Casey agreed to limit his communications regarding the matter to Company A’s lawyer. In December 2001 and February 2002, having become frustrated with the manner in which the claim was being administered by Company A and its lawyer, Mr. Casey sent letters to a claims representative at Company A complaining about how the matter was being handled. Mr. Casey received a letter from Company A’s lawyer demanding that he cease communicating directly with his client. By letter, Mr. Casey agreed not to contact Company A directly and again advised the lawyer that he disagreed that RPC 4.2 prohibited him from contacting Company A. In August 2002, still frustrated with administration of the claim, Mr. Casey again wrote directly to Company A and sent a copy of the letter directly to the represented employer.

Mr. Casey’s conduct violated RPC 4.2, prohibiting a lawyer, in representing a client, from communicating about the subject of the representation with a party that the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

Leslie C. Allen represented the Bar Association. Gerald L. Casey represented himself. Charles K. Wiggins was the hearing officer.

**Reprimanded**

**Kenyon P. Kellogg Jr.** (WSBA No. 1482, admitted 1971), of Bainbridge Island, was ordered to receive two reprimands on June 28, 2005, following a hearing. This discipline was based on his conduct between 2001 and 2004 involving failure to adequately communicate the factors involved in determining the charges for legal services at the outset of the representation, attempting to charge an unreasonable fee, and failure to surrender papers belonging to the client upon termination of the representation.

In 2001, Mr. Kellogg was hired by a client to represent him in the anticipated sale of his company. Before being hired, Mr. Kellogg told the client that he could do the work on an hourly basis at a rate of $200 per hour. Mr. Kellogg did not prepare a written
fee agreement for his work on the sale of the client’s company. Mr. Kellogg had previously performed work for this client but had never employed a written fee agreement for that work, basing fees on time spent times an hourly rate. For prior legal work, Mr. Kellogg had occasionally reduced the amount of the original billing, but had never increased a bill over the hourly charges. In October 2001, Mr. Kellogg’s invoice to the client totaled $10,160, charged at the $200 per hour rate, which the client promptly paid in full. Mr. Kellogg then told the client that the hourly rate would increase to $300 per hour, to which the client agreed. In November and December 2001, invoices sent to the client totaled $6,420 and $26,970 respectively, charged at $300 per hour. The client promptly paid each invoice in full.

A buyer made a nearly full-price offer for the company, and the sale closed in December 2001. Mr. Kellogg worked long hours in connection with the matter, frequently at night. Mr. Kellogg served as the escrow agent, which required that he hold the purchaser’s and seller’s respective documents until he received confirmation that the wire transfer had been accomplished. On December 31, the client’s comptroller e-mailed Mr. Kellogg seeking an estimate of Mr. Kellogg’s December fees by January 4 in order to complete the client’s 2001 accounting. Mr. Kellogg responded that the sales price achieved included what he termed “a pot of ‘found money’...classic ‘value added’ out of which hopefully to be paid a fair fee,” and that “trying to figure out what is ‘fair’ in such circumstances is a unique experience, and may take a bit longer than January 4th.”

Mr. Kellogg’s next invoice, dated March 25, 2002, covered December 1, 2001, through February 22, 2002. It totaled $89,730, computed at a $300 per hour rate, and contained a blank following the line “Plus a fair fee” for what Mr. Kellogg characterized as the “value added.” The client added $10,270 to the hourly charges of $89,730 for a total of $100,000. In an April 2002 letter transmitting “payment in full,” the client explained why he thought the $100,000 was a fair amount and requested copies of his documents. Mr. Kellogg cashed the check. In May 2002, Mr. Kellogg wrote to his client that he was “very angry” and “your apparent concept of fairness and mine are hundreds of thousands of dollars apart.” Mr. Kellogg promised to “finish my invoice” and asked for final exhibit documents and for reconciliation to the final price “so that I can finish binding your agreement materials.”

In August, Mr. Kellogg reissu ed his last invoice and filled in the blank following “Plus a fair fee” with $700,000. He noted that $100,000 had been paid and the balance due was $689,730. In September 2002, the client expressed sorrow “that our relationship must apparently end on this note” and requested that all documents pertaining to his company and to himself be sent to him by September 15. The client offered to pay delivery costs. Nothing was delivered by the September 15 deadline. The client renewed his request for the documents in letters sent in October and December 2002. Mr. Kellogg did not respond until February 2003 in an e-mail to his client referencing “two, probably unrelated, pieces of ‘unfinished business’: I need to finish and redeliver our closing documents,” and “You owe me nearly $700K.” The client responded by indicating he would file a complaint with the Bar Association if he did not receive the requested documents by April. Mr. Kellogg did not comply with the deadline, and in May, he e-mailed the client suggesting a meeting in June. Mr. Kellogg added that “he would be happy to interplead or otherwise escrow whatever you believe is properly yours pending a thoughtful final decision on the differences between us.” In June 2003, the client filed a grievance with the Bar Association. In October 2003, the client wrote to Mr. Kellogg, noting the “formal termination of our professional relationship,” and again requested the documents. In January 2004, Mr. Kellogg delivered the documents to his client’s former comptroller.

Mr. Kellogg’s conduct violated RPC 1.15(d), requiring a lawyer to take steps to permit the client to make informed decisions regarding the representation; RPC 1.5(a), requiring that a lawyer’s fee be reasonable; RPC 1.5(b), requiring that when the lawyer has not regularly represented the client, or if the fee agreement is substantially different than that previously used by the parties, the basis or rate of the fee or factors involved in determining the charges for legal services and the lawyer’s billing practices shall be communicated to the client, before or within a reasonable time after commencing the representation; RPC 1.15(d), requiring a lawyer to take steps to protect clients’ interests when withdrawing from representation, such as, *inter alia*, surrendering papers and property to which the client is entitled; and RPC 8.4(a), prohibiting a lawyer from attempting to violate the Rules of Professional Conduct.

Linda B. Eide represented the Bar Association. R. Bruce Johnson represented Mr. Kellogg. Waldo F. Stone was the hearing officer.

**Reprimanded**

Calvin P. Vance (WSBA No. 29520, admitted 1999), of Spokane, was ordered to receive a reprimand by the Washington State Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Oregon following approval of a no contest plea. This discipline was based on his conduct involving the collection of excessive fees, failure to promptly refund unearned fees, and failure to deposit client funds into a trust account. For more information, see Oregon State Bar Bulletin, Discipline (June 2006), available at www.osbar.org/publications/bulletin/06jun/discipline.html.

Mr. Vance’s conduct violated Oregon DR 2-106(A), prohibiting a lawyer from entering into an agreement for, charging, or collecting an illegal or clearly excessive fee; DR 2-110(A)(3), requiring a lawyer who withdraws from employment to refund promptly any part of a fee paid in advance that has not been earned; and DR 9-101(A), requiring that all funds of clients paid to a lawyer or law firm, including advances for costs and expenses, and escrow and other funds held by a lawyer or law firm for another in the course of work as lawyers, are deposited and maintained in one or more identifiable trust accounts in the state in which the law office is situated.

Linda B. Eide represented the Bar Association. Mr. Vance represented himself.

**Admonished**

Calvin P. Vance (WSBA No. 29520, admitted 1999), of Spokane, was ordered to receive a reprimand by the Washington State Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Oregon following approval of a no contest plea. This discipline was based on his conduct involving the collection of excessive fees, failure to promptly refund unearned fees, and failure to deposit client funds into a trust account. For more information, see Oregon State Bar Bulletin, Discipline (June 2006), available at www.osbar.org/publications/bulletin/06jun/discipline.html.

Mr. Vance’s conduct violated Oregon DR 2-106(A), prohibiting a lawyer from entering into an agreement for, charging, or collecting an illegal or clearly excessive fee; DR 2-110(A)(3), requiring a lawyer who withdraws from employment to refund promptly any part of a fee paid in advance that has not been earned; and DR 9-101(A), requiring that all funds of clients paid to a lawyer or law firm, including advances for costs and expenses, and escrow and other funds held by a lawyer or law firm for another in the course of work as lawyers, are deposited and maintained in one or more identifiable trust accounts in the state in which the law office is situated.

Linda B. Eide represented the Bar Association. Mr. Vance represented himself.
Lowell V. Ruen (WSBA No. 11407, admitted 1981), of Spokane, was, by stipulation, transferred to disability inactive status, effective August 7, 2006. This is not a disciplinary action.
Stewart Sokol & Gray announces that

Roger A. Lenneberg

joins the firm as Of Counsel after serving as Corporate Counsel for Performance Contracting Group.

His practice will focus on facilitating resolution of complex construction and commercial disputes as an advocate, mediator, and risk avoidance consultant.

Stewart Sokol & Gray
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Tel: 503-221-0699 • Fax: 503-223-5706
www.lawssg.com

Tousley Brain Stephens PLLC is pleased to announce that

Toby J. Marshall

has become a Member of the Company and welcomes

Cheryl D. Kringle

as an Associate of the Company.

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1700 Seventh Avenue, Suite 2200
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Brown Yando, PLLC is pleased to announce that

Brianne M. Kampbell

has joined the firm as a partner and the firm has become Brown Yando & Kampbell, PLLC

Proudly serving clients in the areas of business, estate planning, and real estate law.

Steven J. Brown
David A. Yando
Brianne M. Kampbell

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Siderius, Lonergan & Martin, LLP is pleased to announce that

Brian C. Read

has joined the firm as an associate.

Mr. Read will practice in the areas of civil litigation, business law, real estate, banking, and personal injury.

Siderius, Lonergan & Martin, LLP
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Seattle, WA 98101
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Facsimile: 206-624-2805
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The Law Offices of
JEFFREY H. SMITH
is pleased to announce that
Cathy Gormley

has joined the firm as an associate.
Ms. Gormley was formerly with Associated Counsel for the Accused. Her practice focuses on felonies and misdemeanors in State and Federal Courts.

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have moved to:
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John P. Ahlers and Paul R. Cressman Jr.,
formerly partners and the co-chairs of
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are pleased to announce the formation of the new firm of

AHLERS & CRESSMAN PLLC

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Scott R. Sleight   Bruce A. Cohen
Kendall H. Moore   Christina Gerrish Nelson
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Ahlers & Cressman PLLC provides a variety of services to construction industry and commercial clients.

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info@ac-lawyers.com

AIKEN, ST. LOUIS & SILJEG, P.S.
is pleased to announce that
Tamara M. Chin
and
Ann Davison Sattler
have joined the firm.

Ms. Chin, formerly of Chin Law Offices and the Snohomish County Prosecuting Attorney’s Office, has joined the firm as Attorney. Ms. Chin will continue to practice in the areas of family law, guardianships and estates, and general litigation.

Ms. Davison Sattler, formerly of the Law Office of Ann Davison, has joined as Of Counsel. She will continue to practice in the areas of estate planning, business, immigration, and sports and entertainment.

Aiken, St. Louis & Siljeg, P.S.
1200 Norton Building
801 Second Avenue
Seattle, WA 98104-1571
Phone: 206-624-2650
Fax: 206-623-5764
www.aiken.com
EISENHOWER & CARLSON, PLLC

is pleased to announce that

Terry L. Brink

has joined the firm as a member effective January 1, 2007.

Mr. Brink will continue his practice representing clients in the areas of real estate law and land use law.

EISENHOWER & CARLSON, PLLC

1200 Wells Fargo Plaza
1201 Pacific Avenue
Tacoma, WA 98402
253-572-4500

Klarquist Sparkman, LLP

Patents • Trademarks • Copyrights • Litigation

is pleased to announce that

Adam R. Wichman

has joined the firm as an associate attorney.

Mr. Wichman’s practice focuses on intellectual property litigation, counseling, prosecution, and licensing. Mr. Wichman is licensed to practice in Washington and California, and is registered with the United States Patent and Trademark Office.

With offices in Seattle, Portland, and Reno, the firm’s practice focuses exclusively on intellectual property law, including procurement of patents, trademarks, and copyrights, and litigation of intellectual property matters.

Klarquist Sparkman, LLP

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600 University Street, Suite 2950
Seattle, WA 98101
Tel: 206-264-2960
Fax: 206-624-2719
www.klarquist.com

Eisenhower & Carlson, PLLC

is pleased to announce that

Terry L. Brink

has joined the firm as a member effective January 1, 2007.

Mr. Brink will continue his practice representing clients in the areas of real estate law and land use law.

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has joined the firm and that the firm has changed its name to

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For when they insure it is sweet to them to take the money; but when disaster comes it is otherwise and each man draws his rump back and strives not to pay.
— Francesco di Marco Datini — Florentine businessman, letter to his wife, 14th century.

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Calendar

Please check with providers to verify approved CLE credits. To announce a seminar, please send information to:

WSBA Bar News Calendar
1325 Fourth Ave., Ste. 600
Seattle, WA 98101-2539
Fax: 206-727-8319
E-mail: comm@wsba.org

Information must be received by the first day of the month for placement in the following month’s calendar.

Animal Law

Fifth Annual Animal Law Conference
March 9 — Seattle. 6.75 CLE credits. By WSBA-CLE and Animal Law Section; 800-945-WSBA (9722) or 206-443-WSBA (9722).

Business Law

Valuation of a Closely Held Business
March 20 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA (9722) or 206-443-WSBA (9722).

Dispute Resolution/Mediation

Two-Day Advanced Mediator Training Program
March 7-8 — Seattle. 17 CLE credits, including 1.5 ethics. By Alhadeff & Forbes Mediation Services, 206-281-9950.

Four-Day Intensive Mediator Training Program
April 17-20 — Seattle. 41.5 CLE credits, including 4.5 ethics. By Alhadeff & Forbes Mediation Services, 206-281-9950.

Conflict Resolution Skills for the Workplace
April 19-20 — Seattle. 10.25 CLE credits. By the Dispute Resolution Center of King County, 206-443-9603, ext. 107, jessicatd@kcdrc.org or www.kcdrc.org.

Environmental Law

First Annual University of Washington School of Law Climate Change Conference: Law, Economics and Impacts
March 2 — Seattle. 7 CLE credits. By UW School of Law, 206-543-0059 or 800-CLE-UNIV.

Estate Planning

4th Annual Trust and Estate Litigation Seminar
March 28 — Seattle. 6.5 CLE credits, including .75 ethics. By WSBA-CLE and Real Property, Probate and Trust Section; 800-945-WSBA (9722) or 206-443-WSBA (9722).

Intellectual Property Law

Protecting and Collecting: Advising Business Clients Endangered by Piracy, Gray Market, and Counterfeiting Activities
March 8 — Seattle. 7 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA (9722) or 206-443-WSBA (9722).

12th Annual Intellectual Property Institute
March 16 — Seattle. 6.5 CLE credits, including 1 ethic. By WSBA-CLE and Intellectual Property Section; 800-945-WSBA (9722) or 206-443-WSBA (9722).

Litigation

Discovery
April 5 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA (9722) or 206-443-WSBA (9722).

Ethics

Ethics in Civil Litigation Institute
April 25 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA (9722) or 206-443-WSBA (9722).

Holding Assets Through Pass-Through Entities
April 4 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA (9722) or 206-443-WSBA (9722).

HIPAA Privacy and Security
April 19 — Seattle. CLE credits pending. By WSBA-CLE and Real Property, Probate and Trust Section; 800-945-WSBA (9722) or 206-443-WSBA (9722).

Spring RPPT Program
April 19 — Seattle. CLE credits pending. By WSBA-CLE and Real Property, Probate and Trust Section; 800-945-WSBA (9722) or 206-443-WSBA (9722).

Spring RPPT Program
April 27 — Spokane. CLE credits pending. By WSBA-CLE and Real Property, Probate and Trust Section; 800-945-WSBA (9722) or 206-443-WSBA (9722).

Senior Lawyers

Senior Lawyers Annual Conference
April 9 — SeaTac. CLE credits pending. By WSBA-CLE and Senior Lawyers Section; 800-945-WSBA (9722) or 206-443-WSBA (9722).

Trial Law

David Ball on Damages: The Essential Update

Hot Topics for the Plaintiff Lawyer in Oregon and Washington
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For sale: Washington First; Appellate through volume 50. As sets. Old digests and Am Jur. Hank Hibbard at 253-472-2600 or hank@hibbardlaw.com.

For sale: Law books: Washington Reports; Washington Reports 2d (1-138); Washington Appellate Reports (1-97); Washington Digest 2d; Washington Practice. Good condition. Call 360-221-5859.


Ballard office space available April 1, 2007: Three large, bright offices and two secretarial stations for rent to a small law firm or other professional group. Shared telephone system, conference room, and kitchenette. Storage space, photocopying, facsimile, and postage services also available. Contact Karen at karenb@lazaldi.com for further information.

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The state of Washington’s Department of Health, Health Professions Quality Assurance Division, is seeking qualified attorneys to fill new staff attorney positions (Hearings Examiner 3) with its Legal Services Unit based in the Olympia area. Interested members of the Bar should go to the following website: http://www.doh.wa.gov/job_ann.htm and click on Hearings Examiner 3 (staff attorney).

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Deadline: Text and payment must be received (not postmarked) by the first day of each month for the issue following, e.g., April 1 for the May issue. No cancellations after the deadline. Mail to:

WSBA Bar News Classifieds
1325 Fourth Ave., Ste. 600
Seattle, WA 98101-2539

Qualifying experience for positions available: State and federal law allow minimum, but prohibit maximum, qualifying experience. No ranges (e.g., “5-10 years”). If you have questions, please contact Dené Canter at 206-727-8213 or classifieds@wsba.org.
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